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Presidential Documents

Title 3—

The President

Memorandum of April 25, 2023

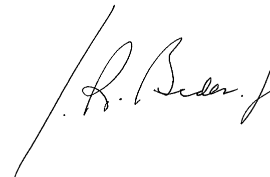
2022 Unified Command Plan

Memorandum for the Secretary of Defense

Pursuant to my authority as Commander in Chief, I hereby approve and direct the implementation of the 2022 Unified Command Plan.

Consistent with section 161(b)(2) of title 10, United States Code, and section 301 of title 3, United States Code, you are directed to notify the Congress on my behalf.

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



THE WHITE HOUSE,
Washington, April 25, 2023

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

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3565

[Docket No. RHS–23–MFH–0008]

Loan Guarantees Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notification of updates in the competitive lender submissions process.

SUMMARY: The Rural Housing Service (RHS or Agency), an agency within Rural Development (RD), announces updates in the process for competitive lender submissions (responses) regarding proposed projects for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP). The amount of program dollars available for the GRRHP will be determined by the Appropriations Act for each fiscal year.

DATES: The effective date of the process updates is April 28, 2023.

ADDRESSES: Responses and applications must be submitted electronically in accordance with the instructions in Section IV of this Notice. Section 538 GRRHP Response Form/Application Submission Information.

FOR FURTHER INFORMATION CONTACT: Jonathan Bell, Director, Processing and Report Review Branches, Production and Preservation Division, Multifamily Housing Programs, Rural Development, United States Department of Agriculture, via email: *MFHprocessing1@usda.gov* or telephone: (254) 742–9764. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service at 711 Relay Service.

SUPPLEMENTARY INFORMATION:

Authority

The GRRHP is authorized under the Housing Act of 1949 as amended, Section 538, Public Law 106–569, 42 U.S.C. 1490p–2; implemented under 7 CFR part 3565.

Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian Tribes, non-profits, and other local, State, and Federal agencies.

The Section 538 GRRHP is a program administered by the RHS, under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p–2). The purpose of the GRRHP is to increase the supply of affordable rural rental housing, using loan guarantees that encourage partnerships between the RHS, private lenders, and public agencies.

On October 15, 2019 (84 FR 55034), the Agency published a final rule in the **Federal Register** eliminating the requirement to publish an annual Notice of Funding Availability (NOFA). The final rule states that RD will use the standards from the previous NOFA as published in the **Federal Register** on December 21, 2017 (82 FR 60579). If RD chooses to change the selection and/or scoring criteria or fees charged in subsequent years, it will inform the public of those changes through additional notices in the **Federal Register**.

Since the publication of the final rule on October 15, 2019, there have been changes, including but not limited to, submission addresses, contact person, and fee structure. This Notice will consolidate all changes and replace the notice as published on December 21, 2017, as the reference for interested parties to follow when submitting GRRHP applications.

Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the eligibility requirements, lender responsibilities, and the overall response and application processes.

Any modifications to this document, including changes to the selection and/or scoring criteria or fees charged in subsequent years, will be published in the **Federal Register**.

Discussion of Program Updates

The Agency announces the following updates to the GRRHP:

1. The NOSA Response Form will now be titled and referred to as the Section 538 GRRHP Response Form. The Section 538 GRRHP Response Form and the complete application must be submitted to the Agency at the same time. The obligation of available funds, via the issuance of Conditional Commitments for loan guarantees, will be made in the following order: (1) to outstanding approved applications from prior years for which Conditional Commitments have not been issued; then (2) to approved applications in the chronological order on which they were approved.

2. Applications will be accepted on a continual basis. Selected responses and applications that are deemed eligible for further processing will be funded to the extent an Appropriations Act provides sufficient funding in the fiscal year the response and application is selected. If funding is not sufficient in any given fiscal year, funding will be provided under the next funding Appropriations Act, subject to the availability of funds. Approved applications are subject to the fee structure in effect when the response and application were received by the Agency.

3. If the transaction includes a transfer of ownership and assumption of a Section 515 Rural Rental Housing (RRH) property, the complete 538 application and the complete Section 515 RRH transfer of ownership application must be submitted simultaneously on the same day to the Agency. If the complete 538 application is not submitted simultaneously with the Section 515 RRH transfer of ownership application, the 538 application will be rejected and returned to the lender. The lender may resubmit the application when both the complete 538 application and the 515 RRH transfer of ownership application can be submitted simultaneously.

4. A Conditional Commitment must be issued by the Agency before any construction begins on the project. Drawings (plans) and specifications for building construction must be submitted to the Agency and concurred by the Agency before any construction begins on the project. Applicants are reminded that in accordance with 7 CFR

3565.206(g), refinancing of an existing debt is not an eligible use of Section 538 GRRHP loan funds, except in the case of an existing guaranteed loan where the Agency determines that the refinancing is in the government's interest or furthers the objectives of the program.

5. The scores awarded for each priority criteria have been significantly decreased.

6. The Agency has modified the Energy priority criteria. Points may be awarded if applicants enroll in the US Environmental Protection Agency's (EPA) ENERGY STAR Portfolio Manager and track and report energy consumption to the Agency annually.

7. The Agency has reinstated the priority criteria that points will be awarded to projects located on Tribal lands.

8. The address for lenders to submit applications for lender approval has changed. Applications for lender approval can only be submitted electronically to the address listed in the Lender Eligibility section of this Notice.

I. Funding Opportunity Description

The GRRHP program is administered subject to appropriations by the United States Department of Agriculture (USDA) as authorized under the Housing Act of 1949 as amended, section 538, Public Law 106–569, 42 U.S.C. 1490p–2, and as implemented under 7 CFR part 3565. Section 538 GRRH program will continue to follow procedures similar to other RD guaranteed loan programs and accept applications on a continuous basis.

The purpose of the GRRHP is to increase the supply of affordable rural rental housing using loan guarantees to encourage partnerships between the Agency, private lenders, and public agencies.

ELIGIBILITY OF PRIOR YEAR SELECTED RESPONSES: Prior fiscal year response selections that did not develop into complete applications within the time constraints stipulated by the Agency will be cancelled. The Agency will notify lenders of the cancellation. A new application for the project may be submitted subject to the conditions of this document.

Prior years' responses that were selected by the Agency, with a complete application submitted by the lender within 90 days from the date of notification of response selection (unless an extension was granted by the Agency), will be eligible for review, approval, and available current fiscal year program dollars without having to submit a new response.

If approved, applications that accompanied a response submitted under a previous fiscal year notice (outstanding prior years approved applications) will be obligated in the order that the request for obligation was received, to the extent of available funding.

Once the outstanding prior years approved applications have been funded, the Agency will fund applications approved in the current fiscal year in the order by which the request for obligation was received. If funding is insufficient to serve applications approved in the current fiscal year, they will be funded according to the priority scoring set forth in Section V of this document.

The obligation of program funds is discussed further in Section VI of this document.

II. Award Information

Anyone interested in submitting a response and application for funding under this program is encouraged to visit the RD website Multifamily Housing Loan Guarantees | Rural Development (*usda.gov*) periodically for updated information regarding the status of funding authorized for this program.

(1) *QUALIFYING PROPERTIES:* Qualifying properties include new construction for multi-family housing units and the acquisition of existing structures with a minimum per unit rehabilitation expenditure requirement in accordance with 7 CFR 3565.252. The Agency does not finance acquisition only deals. 7 CFR 3565.205(a)

Also eligible is the revitalization, repair, and transfer (as specified in 7 CFR 3560.406) of existing Section 515 RRH and Section 514/516 Farm Labor Housing (FLH) (transfer costs are subject to Agency approval and must be an eligible use of loan proceeds as specified in 7 CFR 3565.205), and properties involved in the Agency's Multifamily Preservation and Revitalization (MPR) Demonstration program. Equity payment, as stipulated in 7 CFR 3560.406, in the transfer of existing direct Section 515 and Section 514/516 FLH, is an eligible use of guaranteed loan proceeds. In order to be considered, the transfer of Section 515 and Section 514/516 FLH and MPR projects must need repairs and undergo revitalization of a minimum of $6,500 per unit.

(2) *ELIGIBLE FINANCING SOURCES:* Any form of Federal, State, and conventional sources of financing can be used in conjunction with the loan guarantee, including HOME Investment Partnerships Program (HOME) grant funds, tax exempt bonds, and Low-Income Housing Tax Credits (LIHTC).

(3) *TYPES OF GUARANTEES:* The Agency offers three types of guarantees which are set forth at 7 CFR 3565.52(c). The Agency liability under any guarantee will decrease or increase, in proportion to any decrease or increase in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. Penalties incurred as a result of default are not covered by any of the program's guarantees. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

(4) *INTEREST CREDIT:* There will be no interest credit. Consolidated Appropriations Act, 2023, Public Law 117–328, Division A, Title III.

(5) *PROGRAM FEES:* The following fees have been determined necessary to cover the projected cost of loan guarantees. These fees may be adjusted based on the Appropriation requirements and in future years to cover the projected costs of loan guarantees in those future years, or additional fees may be charged. Any changes to the program fees will be announced in a document published in the **Federal Register**. The fees are as follows:

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee as specified at 7 CFR 3565.53(b). For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) *Annual guarantee fee.* An annual guarantee fee (the outstanding principal amount of the loan as of December 31 times the annual guarantee fee) will be charged each year or portion of a year that the guarantee is outstanding. This fee will be collected, in advance, no later than February 28th of each calendar year.

(c) As permitted under 7 CFR 3565.302(b)(5), there is a non-refundable service fee of $1,500 for the review of a lender's first request to extend the term of a guarantee commitment beyond its original expiration (the request must be received by the Agency prior to the commitment's expiration). For any subsequent extension request, the fee will be $2,500.

(d) As permitted under 7 CFR 3565.302(b)(5), there is a non-refundable service fee of $3,500 for the review of a lender's first request to reopen an application when a commitment has expired. For any subsequent extension request to reopen an application after

the commitment has expired, the fee will be $3,500.

(e) As permitted under 7 CFR 3565.302(b)(4), there is a non-refundable service fee of $1,500 in connection with a lender's request to approve the transfer of property or a change in composition of the ownership entity.

(f) There is no application fee.

(g) There is no lender application fee for lender approval.

(h) There is no surcharge for the guarantee of construction advances.

The current initial and annual guarantee fees can be found in a notice published in the **Federal Register** on March 3, 2022 (87 FR 12077).

III. Lender Eligibility Information

ELIGIBLE LENDERS: Lenders must satisfy the eligibility requirements set forth in 7 CFR 3565.102 and must be approved by the Agency pursuant to 7 CFR 3565.103. In order to be eligible as required by 7 CFR 3565.102, a lender must be a licensed business entity or Housing Finance Agency (HFA) in good standing in the State or States where it conducts business and meet the other requirements contained in 7 CFR 3565.102. Please review that section for a list of the criteria. The Agency will only consider responses and applications from GRRHP eligible lenders, or approved lenders as described in 7 CFR 3565.102 and 3565.103 respectively.

Lenders who do not have GRRHP approved lender status and whose responses are selected will be notified by the Agency to submit a request for GRRHP lender approval within 30 days of notification. Alternately, lenders may submit a request for GRRHP approved lender status with the Section 538 GRRHP Response and application submission. Lenders must meet the standards in 7 CFR 3565.103 to obtain GRRHP approved-lender status.

Lenders that have received GRRHP lender approval, and that remain in good standing in accordance with 7 CFR 3565.105, do not need to reapply for GRRHP lender approval.

(1) *SUBMISSION OF DOCUMENTATION FOR GRRHP LENDER APPROVAL:* All lenders that have not yet received GRRHP lender approval must submit a complete lender application to: Multi-Family Housing Asset Management Division, Branch Chief, Risk and Counterparty Oversight, *RDMFH_RCOB_GRRHP@USDA.gov.* Lender applications must be identified as ''Lender Application—Section 538 Guaranteed Rural Rental Housing Program'' in the subject line.

IV. Section 538 GRRHP Response Form/ Application Submission Information

The Section 538 GRRHP Response Form and application Complete responses and complete applications must be submitted to the applicable mailbox based on the location of the project (as outlined below).

(1) The Section 538 GRRHP Response Form is available on the Multifamily Housing Loan Guarantees website *https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees.*

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(AK, AL, AR, AZ, CA, CO, FL, GA, HI, ID, KY, LA, MS, MT, NC, NM, NV, OK, OR, PR, SC, TN, TX, UT, VI, WA, WY).

(2) The following instructions will be used to for electronic submission for the Section 538 GRRHP Response Form and the Application:

Once the Section 538 GRRHP Response Form and complete application are complete and ready for submission to the applicable Processing and Report Review (PRR) Branch, please take the following steps to submit the Section 538 GRRHP Response Form, application and supporting documentation:

(a) Email *MFHprocessing1@usda.gov* or *MFHprocessing2@usda.gov,* as applicable, to request a shared folder in CloudVault. The email must contain the following information:

i. *Subject line:* Type of Section 538 GRRHP Response Form/Application Submission.

ii. *Body of email:* Borrower Name, Project Name, Borrower Contact Information, Project State.

iii. *Request language:* ''Please create a shared CloudVault folder so that we may submit our Section 538 GRRHP Response Form, complete application and supporting documents.''

(b) Once the email request to create a shared CloudVault folder has been received, a shared folder will be created within 2 business days. When the shared CloudVault folder is created, an email will be sent to the applicant's submission email address with a link to the shared folder.

(c) The applicant will upload all required documents for the applicable Section 538 GRRHP Response Form and application to the shared CloudVault folder. The applicant must also upload a Table of Contents of all the documents that have been uploaded to the shared CloudVault folder.

(d) Once all required documents for the applicable Section 538 GRRHP Response Form and complete application have been uploaded to the CloudVault shared folder, the applicant will email *MFHprocessing1@usda.gov* or *MFHprocessing2@usda.gov,* as applicable.

(e) The email must contain the following information:

i. *Subject line:* Type of Section 538 GRRHP Response/Application Submission. (Same wording as the first email)

ii. *Body of email:* Borrower Name, Project Name, Borrower Contact Information, Project State.

iii. *Request language:* ''We have completed our upload to the shared CloudVault folder for our Section 538 GRRHP Response Form, complete application and all required documentation and it is ready for review.''

Please note: CloudVault is a USDA-approved cloud-based file sharing and synchronization system. CloudVault folders are not suitable nor intended for file storage due to agency file retention policies and space limitations. Therefore, the agency will remove all application-related files stored in shared CloudVault folders the latter of either 180 days from the application date, or once the application has been processed and the transaction has been closed.

(3) *Content of Responses:* All responses require lender information and project specific data as set out in this Notice. Complete responses must include a signed cover letter from the lender, on the lender's letterhead. The lender must provide the requested information concerning the project, to establish the purpose of the proposed project, its location, and how it meets the established priorities for funding.

In compliance with Agency guidance to determine the lender's (participants) eligibility, the Agency is responsible for screening lenders and its principals for debarment and suspension. Screening will take place when the lender submits a complete application to the Agency and prior to obligation of the loan. As a part of the complete application package and in accordance with 2 CFR part 25, the lender must be registered in the System for Award Management (SAM) and include the Unique Entity Identifier (UEI). Lenders currently registered in SAM have automatically been assigned a UEI. New lenders will be assigned a UEI during registration. This is only required for the lender and

is not required for the lender's principals.

Also, as part of the complete application package, the lender must provide a list of all the lender's principals (in accordance with the definition below) in the organization. This information will be used to screen the lender's principals for debarment and suspension.

As specified at 2 CFR 180.995, ''*Principal*'' is defined as:

- An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
- a consultant or other person, whether or not employed by the participant or paid with Federal funds, who—
  - ○ Is in a position to handle Federal funds;
  - ○ Is in a position to influence or control the use of those funds; or
  - ○ Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(a) *Lender Certification:* The lender must certify that the lender will make a loan to the prospective borrower for the proposed project, under specified terms and conditions subject to the issuance of the GRRHP guarantee. Lender certification must be on the lender's letterhead and signed by both the lender and the prospective borrower.

(b) *Project Specific Data:* The lender must submit the project specific data below in the Section 538 GRRHP Response Form:

Data element	Information that must be included
Lender Name	Insert the lender's name.
Lender Tax ID #	Insert lender's tax ID number.
Lender Unique Entity Identifier (UEI)	Insert lender's (UEI).
Lender Contact Name	Name of the lender contact for loan.
Mailing Address	Lender's complete mailing address.
Phone #	Phone number for lender contact.
Fax #	Insert lender's fax number.
Email Address	Insert lender contact Email address.
Borrower Name and Organization Type	State whether borrower is a Limited Partnership, Corporation, Indian Tribe, etc.
Equal Opportunity Survey	Optional Completion.
Tax Classification Type	State whether borrower is for profit, not for profit, etc.
Borrower Tax ID #	Insert borrower's tax ID number.
Borrower UEI (if applicable)	Insert borrower's UEI.
Borrower Address, including County	Borrower's complete address and county.
Borrower Phone #, Fax # and Email Address	Insert borrower's phone number, fax number and email address.
Principal or Key Member for the Borrower	Insert name and title. List the general partners if a limited partnership, officers if a corporation or members of a Limited Liability Corporation.
Borrower Information and Statement of Housing Development Experience.	Attach relevant information.
New Construction, Acquisition with Rehabilitation	State whether the project is new construction or acquisition with rehabilitation.
Revitalization, Repair, and Transfer (as stipulated in 7 CFR 3560.406) of Existing Direct Section 515 and Section 514/516 FLH or MPR.	Yes or No (Transfer costs, including equity payments, are subject to Agency approval and must be an eligible use of loan proceeds in 7 CFR 3565.205).
Project Location Town or City	Town or city in which the project is located.
Project County	County in which the project is located.
Project State	State in which the project is located.
Project Zip Code	Insert zip code where the project is located.
Project Congressional District	Congressional District for project location.
Project Name	Insert project name.
Project Type	Family, senior (all residents 55 years or older), or mixed.
Property Description and Proposed Development Schedule	Provide as an attachment.
Total Project Development Cost	Enter amount for total project.
# of Units	Insert the number of units in the project.
Ratio of 3–5 Bedroom Units to Total Units	Insert percentage of 3–5 bedroom units to total units.
Cost Per Unit	Total development cost divided by number of units.
Rent	Proposed rent structure.
Median Income for Community	Provide median income for the community.
Evidence of Site Control	Attach relevant information.
Description of Any Environmental Issues	Attach relevant information.
Loan Amount	Insert the loan amount.
Borrower's Proposed Equity	Insert amount and source.
Low Income Housing Tax Credits	Have tax credits been awarded? If tax credits were awarded, submit a copy of the award/evidence of award with your response. If not, when do you anticipate an award will be made (announced)? What is the [estimated] value of the tax credits? Letters of application and commitment letters should be included, if available.
Other Sources of Funds	List all funding sources other than tax credits and amounts for each source, type, rates and terms of loans or grant funds.
Loan to Total Development Cost	Guaranteed loan divided by the total development costs of project.
Debt Coverage Ratio	Net Operating Income divided by debt service payments.
Percentage of Guarantee	Percentage guarantee requested.
Collateral	Attach relevant information.
Colonia, Tribal Lands, or State's Consolidated Plan or State Needs Assessment.	Colonia, on an Indian Reservation, or in a place identified in the State's Consolidated Plan or State Needs Assessment as a high need community for multi-family housing.

Data element	Information that must be included
Is the Property Located in a Federally Declared Disaster Area?	If yes, please provide documentation (*i.e.,* Presidential Declaration document).
Population	Provide the population of the county, city, or town where the project is or will be located.
What Type of Guarantee is Being Requested, Permanent Only (Option 1), Construction and Permanent (Option 2), or Continuous (Option 3).	Enter the type of guarantee.
Loan Term	Minimum 25-year term. Maximum 40-year term (includes construction period). May amortize up to 40 years. Balloon mortgages permitted after the 25th year.
Guarantee Fee Structure Designation	Indicate the Guarantee Fee Structure: Standard Fee. Preservation of 514/515/516. Workforce Housing. Energy Efficient/Green. (Documentation is required).
Participation in Energy Efficient Programs	Initial checklist indicating prerequisites to register for participation in a particular energy efficient program. All checklists must be accompanied by a signed affidavit by the project architect stating that the goals are achievable. If property management is certified for green property management, the certification must be provided.

(c) *The Proposed Borrower Information:*

i. Lender certification that the borrower and principals are not barred or suspended from participating in State or Federal loan programs and are not delinquent on any Federal debt.

ii. Borrower's unaudited or audited financial statements.

iii. Statement of borrower's housing development experience.

(d) *Lender Eligibility and Approval Status:* Evidence that the lender is either an approved lender for the purposes of the GRRHP or that the lender is eligible to apply for approved lender status. The lender's application package requesting approved lender status can be submitted with the response and application. If a lender who has not yet been approved by the Agency submits a Section 538 GRRHP Response Form and complete application, the lender approval application must be submitted to the Multi-Family Housing Asset Management Division, Risk and Counterparty Oversight Branch, *RDMFH_RCOB_GRRHP@USDA.gov* within 30 calendar days of application submission (see SUBMISSION OF DOCUMENTATION FOR GRRHP LENDER APPROVAL above). The Agency will not issue a loan note guarantee until the lender is approved by the Agency.

(e) *Competitive Criteria:* Information that shows how the proposal is responsive to the priority scoring criteria specified in this Notice.

(4) *Content of Application:* The lender must submit a complete application which consists of the following:

(1) Completed GRRHP Response Form (available on the Multifamily Housing Loan Guarantees website *https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees*).

(2) The lender's certification will serve as assurance to the Agency that the borrower, the project, and the proposed financing meet the lender's standards for loan making. The lender must certify the following on the lender's letterhead:

☐ The information contained in the application is consistent with the lender's underwriting and loan making standards.

☐ Current List of Lender's Officers and Principals.

☐ The lender has completed the lender's review and has identified any significant findings in a narrative attached to this certification.

☐ The lender agrees to make a loan to the borrower for the proposed project, subject to the Agency's issuance of an appropriate guarantee option.

☐ The lender must provide to the Agency a certification from the borrower that the borrower is not under any State or Federal order suspending or debarring participation in State or Federal loan programs and that the borrower is not delinquent on any non-tax obligation to the United States.

☐ The lender must certify that the proposed loan amount (for such part of the property attributable to dwelling use) and the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act (12 U.S.C. 1713(c)) have not been exceeded.

☐ The lender must certify that the owner and development team have the qualifications and experience sufficient to carry out development, management, and ownership responsibilities.

☐ The lender must certify that if it is applying for a continuous guarantee, the project has the appropriate low loan-to-cost ratio as determined by the Agency (*7 CFR 3565.52(c)(3)).*

☐ The lender must certify that the property is located in an eligible rural area.

☐ The lender must certify that it has conducted due diligence and the results have been taken into consideration in the appraisal.

☐ The lender must certify that it has reviewed and approved the management plan and agreement and confirmed that they are consistent with Agency requirements.

☐ Prior to the issuance of the guarantee, the lender must certify that construction meets basic construction requirements.

(3) Exhibits and Supporting Information (Forms to be included in the application package):

☐ Form RD 3565–1, Application for Loan and Guarantee.

☐ Form RD 3565–3, Lender's Agreement.

☐ RD Instruction 1940–Q, Exhibit A–2, Statement for Loan Guarantees.

☐ Attachment 4–D, Housing Allowances for Utilities and Other Public Services.

☐ Form RD 1944–37, Previous Participation Certification.

☐ Form RD 3560–30, Certification of No Identity of Interest (IOI), if applicable.

☐ Form RD 3560–31, Identity of Interest Disclosure/Qualification Certification, if applicable.

☐ Form RD 1910–11, Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.

☐ Form HUD 9832, Management Entity Profile.
☐ Form HUD 935.2, Affirmative Fair Housing Marketing Plan.
☐ FEMA Form 086–0–32, Special Flood Hazard Determination (7 CFR 3565.254).
☐ Form RD 1924–13, Estimate and Certificate of Actual Cost.
☐ Form RD 400–4, Assurance Agreement.
☐ Form RD 1924–25, Plan Certification Form.
☐ Form RD 400–1, Equal Opportunity Agreement.
☐ Form RD 400–6, Compliance Statement.
☐ Form RD 400–3, Notice to Contractors and Applicants (prepared by the Agency).

Other Required Supporting Information:

Borrower information:

☐ Financial statements with certification(s) (newly formed entities applying for a construction/permanent guarantee do not need to provide financial statements at the time of application).
☐ Credit report for the entity and any guarantor.
☐ Proposed limited partnership agreement and certificate of limited partnership (if applicable). Agency requirements should be contained in one section of the agreement and their location identified by the borrower or their attorney in a cover sheet.
☐ If a corporate entity, its Articles of Organization and its Operating Agreement.

If the borrower is a nonprofit organization:

☐ Tax-exempt ruling from the IRS designating them as a 501(c)(3) or 501(c)(4) organization. If the designation is pending, a copy of the designation request must be submitted.
☐ Evidence of organization under State law or copies of pending applications.
☐ A list of board members.

If the borrower is a public body:

☐ The enabling statute or the State law of organization.

Project Information:

☐ An application fee, if applicable.
☐ An appraisal and market study.
☐ Project information including project name, location, number and type of units, the development team, property manager, lawyer, and syndicator. The development team includes the developer (including all principals), architect, and contractor.
☐ Capital Needs Assessment (for rehabilitation loans only). Does the Capital Needs Assessment and Capital Improvement Plan call for a replacement reserve escrow that meets or exceeds the $1,000/unit threshold by year three? If not, document underwriting explanation (7 CFR 3565.254(b)(4)). Include a Reserve for Replacement schedule.
☐ State Clearinghouse comments or recommendations.
☐ Site plan, including contour lines.
☐ Plot plan.
☐ Floor plan of each living unit type and other type spaces.
☐ Building exterior elevations.
☐ FEMA Form 086–0–33, Elevation Certificate.
☐ Typical building exterior wall section.
☐ Description and justification of any related facilities and schedule of separate charges for related facilities, if any.
☐ Design development/working plans/construction specifications. Plans, specifications, and estimates must fully describe all of the work to be completed, including all landscaping, construction, repairs, and site development work. The plans must be clear and accurate with adequate dimensions and sufficient scale for estimating purposes.

Technical data, tests, or engineering evaluations needed to support the design of the development must be included.

Property Management Information:

☐ Management plan as specified by 7 CFR 3656.351. A complete management plan will include: Details for managing a project with scattered sites (if applicable); completion of Form HUD 935.2; procedures for determining applicant eligibility; demonstrated capacity to manage the unique leasing occupancy restrictions of the guaranteed program; description of rent collection; lease provisions covering termination and eviction; provision of a copy of tenant protection and grievance procedures to tenants; description of security plan; plans for maintenance, repair, replacement, tenant work requests, management and maintenance staffing plans; detailed compliance with Federal and State environmental laws; description of energy conservation measures including recycling; detailed management and maintenance staffing plans; and information on staff training programs. The plan must include a statement confirming that it includes a provision for access to project's books and records by USDA staff, USDA–IG, GAO, and the Department of Justice; information on accounting, record keeping, data systems, and software. 7 CFR 3565.351(a)(7).
☐ Proposed management agreement
☐ Qualifications of the property manager.
☐ The lender must confirm and provide documentation that neither the property management entity nor the property management entity's principals are debarred or suspended from Federal work by accessing the GSA debarment list and CAIVRS (Credit Voice Response System) in the Do Not Pay portal at *http://donotpay.treas.gov/portal.html.*

Contractor Information:

☐ Demonstrated experience of the general contractor in building multifamily housing of the size design, scope, and complexity of the project proposed in the application.

Financing Information:

☐ Lender's conditional commitment on the lender's letterhead with lender's signature specifying the GRRHP option under which the project loan is to be guaranteed.
☐ Sources and Uses, proforma statement or a comparable document.
☐ Lender's narrative.
☐ A copy of the proforma budget detailing the first year and a typical year's operation (Proformas with and without the interest credit award will serve as justification for the interest credit award.).
☐ Disclosure of any change in financing since response to the Notice submission.
☐ Type of utilities and utility allowances, if applicable.
☐ Confirm that Operating and Maintenance (O&M) Reserve is at least two percent (see 7 CFR 3565.3) of the total loan amount (not just guaranteed portion). Calculation of O&M reserve for congregate care facilities and larger projects should reflect absorption rates in the market study to cover shortfalls between estimated operating budget calculations and rent-up assumptions. Funds contributed as O&M reserves are contributed from the borrower's own resources or an irrevocable letter of credit and are not to be included as part of the total development cost calculation. 7 CFR 3565.52(e); 7 CFR 3565.402(a)(2).
☐ For Option Two and Option Three guarantees, confirm that the construction contingency equal to two percent of the construction contract, inclusive of the contractor's fee and hard and soft costs (see 7 CFR 3565.3). This is to be funded at or prior to closing by the contractor 7 CFR 3565.402(a)(2).
☐ Ensure the loan meets the regulatory requirements according to applicable classification under 7 CFR 3565.251–254. Provide evidence of adequate insurance for the project (7 CFR 3565.351(a)(5)).
☐ Interest Credit Request, if applicable.

Environmental Information:

☐ Most current version of the ASTM Standard E 1528–14, Phase I Environmental Site Assessment Process published by the American Society for Testing and Materials (ASTM).

☐ Environmental Information in accordance with 7 CFR part 1970—Environmental Policies and Procedures.

☐ Compliance with historic and architectural laws, if applicable.

☐ Comments regarding relevant off-site conditions.

☐ Land survey.

Legal and Regulatory Items:

☐ Standard Regulatory Agreement approved by the Agency. (7 CFR 3565.303(d)(11).

☐ Non-Standard Regulatory Agreement(s) containing provisions for transferability between lenders, binding on the borrower and their successors (7 CFR 3565.351(a)), and requires that the borrower: make all principal and interest payments under the note, maintain the project as affordable housing in good physical condition; maintain complete project books and records; and comply with all Federal Fair Housing requirements under the terms of the note (7 CFR 3565.351(a)).

☐ Confirmation in writing that the borrower is in compliance with the Affirmative Fair Housing Marketing Plan (7 CFR 3565.353).

☐ Verify use of security instruments prepared, executed, recorded and/or delivered per program guidelines and that those instruments are in compliance with the terms of the conditional commitment.

☐ Verify use of the construction contract based on standard AIA Document A–101. If this document is used, it should be modified as described in Form RD 1924–25 or a similar form.

☐ Verify use of contract specifications, documents and forms. Use Form RD 1924–6 ''Construction Contract'' or similar document as required by Executive Order 11246, Non-Discrimination in Employment by Construction Contractors.

V. Response and Application Review Information

(1) *SCORING OF PRIORITY CRITERIA FOR SELECTION:* Complete applications received will be scored based on the criteria set forth below to establish priority in the event there is insufficient funding. As specified at 7 CFR 3565.5(b), priority will be given to projects: in smaller rural communities, in the neediest communities having the highest percentage of leveraging, having the lowest interest rate, or having the highest ratio of 3–5 bedroom units to total units, or on Tribal lands. In addition, as permitted in 7 CFR 3565.5(b), to meet important program goals, priority points will be given for projects that qualify for reduced annual fees, including workforce housing, Section 515 or Section 514/516 preservation and green and energy efficient housing projects.

The priority scoring criteria for projects are listed below.

Priority 1—Projects located in eligible rural communities with the lowest populations. Two points are awarded if the city or town population is under 10,000 people.

Priority 2—Projects in the most-needy communities. Two points are awarded if the property is located in a persistent poverty county as defined by the USDA Economic Research Service.

Priority—Projects that demonstrate partnering and leveraging of third-party funding. Two points are awarded if the loan to total development cost ratio is less than 50%.

Priority 4—Projects with the highest ratio of 3–5 bedroom units to total units. Two points are awarded if the ratio of 3–5 bedroom units to total units is 25% or more.

Priority 5—Projects on Tribal land. Two points are awarded if the project is located on Tribal land.

Priority 6—Projects with a lower Section 538 guaranteed loan interest rate. One point is awarded if the interest rate is equal to or less than 130% of the long-term annual applicable Federal rate (AFR Table 1) at the time of application submission to the Agency.

Priority 7—Projects determined eligible for reduced annual Section 538 fees under the **Federal Register** notice published on March 3, 2022 (87 FR 12077). Two points awarded for each of the criteria met for reduced annual fees: (1) Workforce Housing (Rents Between 80%–115% Area Median Income), or (2) Preservation of Existing Section 515 and Section 514/516 Rural Development Properties or (3) Section 538 New Construction or Substantial Rehabilitation Meeting Green or Energy Efficiency Requirements. Projects will be held to the energy program standards in effect the year the Loan Note Guarantee is issued.

Priority 8—Energy consumption performance. Two points will be awarded if the lender obtains the borrower's agreement to enroll in the United States EPA's ENERGY STAR Portfolio Manager and document and report energy consumption for the property to the Agency. Along with the collection of the borrower's annual reports (outlined in 7 CFR 3565.351), to obtain the priority points the lender must collect the Statement of Energy Performance (SEP) report from the borrower and submit it to the Agency for review. This will allow the Agency to track the energy consumption performance of the project. Borrowers may access the EPA's ENERGY STAR Portfolio Manager software at no cost.

If there is insufficient funding available to fund all approved projects and projects have equal scores based on the priority criteria, the Agency will rank the tied projects based on the scores for Priority 7. If there is still a tie, the Agency will obligate funds in order from the smallest to largest amount of Agency funding needed.

(2) *NOTIFICATIONS:* Responses and applications will be reviewed concurrently for completeness and eligibility. The Agency will notify the lender generally within 30 days of receipt of a complete application of the determination of award. Incomplete applications, which includes the Section 538 GRRHP Response Form and supporting documentation, will be returned to the lender. The lender may reapply in the future with a new and complete application.

VI. Award Administration Information

(1) *OBLIGATION OF PROGRAM FUNDS:* The Agency will only obligate funds to projects that meet the requirements under 7 CFR part 3565 and this Notice that have submitted a complete application and have undergone a satisfactory environmental review in accordance with the National Environmental Protection Act (NEPA). If there is sufficient funding, once a complete application is received and approved (and any request for GRRHP approved lender status is granted), the Agency will obligate funds. The Agency considers the program to have insufficient funds when the program's annually appropriated funding amount has ten percent or less remaining. If there is insufficient funding, the Agency will review the scores for each approved project and rank them accordingly. As funding becomes available, funding for approved projects will be obligated based on the rankings from high to low scores as described in Section V. Response and Application Review Information.

In the event that the Agency suspends the ability to receive applications until sufficient funding becomes available, a notice will be made to the industry via GovDelivery and/or some other form of acceptable electronic notice.

(2) *CONDITIONAL COMMITMENT:* Once the required documents for obligation are received and all applicable requirements have been met, including NEPA requirements, and to

the extent funding is available, the Agency will issue a Conditional Commitment. The Conditional Commitment will stipulate the conditions that must be fulfilled before the issuance of a guarantee, in accordance with 7 CFR 3565.303.

(3) *ISSUANCE OF GUARANTEE:* The Agency will issue a guarantee to the lender for a project in accordance with 7 CFR 3565.303. No guarantee can be issued without a complete application, review of appropriate certifications, satisfactory assessment of the appropriate level of environmental review, and the completion of any conditional requirements.

(4) *TRACKING OF AVERAGE RENTS:* After the loan closes, the lender will track the initial affordable rent at each property funded and the average market rent in the area. The difference between these two rents will provide the lender with a measure of the impact the GRRHP has on affordable rents. 7 CFR 3565.203.

Build America, Buy America

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABAA) within the IIJA. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

Non-Discrimination Statement

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

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 711 Relay Service. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992, submit your completed form or letter to USDA by:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410;

Fax: (202) 690–7442; or

Email: program.intake@usda.gov.

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

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2023–08952 Filed 4–27–23; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0258]

RIN 1625–AA00

Safety Zone; Port of Los Angeles and Port of Long Beach, San Pedro Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone around the M/V ZHEN HUA 26 while it transits from the Port of Long Beach, CA, from Long Beach Container Terminal (LBCT), LB Berth E22, to inner anchorage, and then to Fenix Marine Services (FMS), LA Berth 302. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo of ship-to-shore gantry cranes which extend more than 200 feet out from the transiting vessel. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Los Angeles—Long Beach, or their designated representative. The Coast Guard recently issued a safety zone for the transit of the M/V ZHEN HUA 26, but additional time is needed to complete the cargo delivery.

DATES: This rule is effective April 26, 2023, though May 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0258 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357–1603, email *D11-SMB-SectorLALB-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because The COTP was notified of the impending arrival of the M/V ZHEN HUA 26 less than 30 days in advance and immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes within the Ports of Los Angeles and Long Beach. The vessel recently updated their timeline and timeframe for the crane delivery to FMS after we issued the first safety zone. This safety zone needs to be extended to protect personnel, vessels, and the marine environment from potential hazards associated with oversized cargo of ship-to-shore gantry cranes, which will extend more than

200 feet out from the transiting vessel. It is impracticable to publish an NPRM because we must establish this safety zone by April 26, 2023.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of the M/V ZHEN HUA 26 while conducting oversized cargo transfer operations at LBCT, LB Berth E22, to inner anchorage, and FMS, LA Berth 302, within the Port of Los Angeles—Long Beach, CA.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 and 70011(b)(3). The COTP Los Angeles—Long Beach has determined that potential hazards associated with the movement of large-scale gantry crane transfer operations will be a safety concern for anyone within a 500-foot radius of the M/V ZHEN HUA 26 during its transit from LBCT, LB Berth E22, while at inner anchorage, and during the vessel's transit from inner anchorage to FMS, LA Berth 302. This hazard will exist while the vessel is within the Los Angeles—Long Beach port complex and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively.

IV. Discussion of the Rule

This rule establishes a safety zone from April 26, 2023, through May 2, 2023, during the transit of the M/V ZHEN HUA 26 and while the vessel is at inner anchorage within the Los Angeles—Long Beach port complex. While the M/V ZHEN HUA 26 is within the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively, the safety zone will encompass the navigable waters around and under the vessel, form surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel. The safety zone is needed to protect personnel, mariners, and vessels from hazards associated with ship-to shore gantry crane arms which will extend more than 200 feet out from the transiting vessel.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Sector Los Angeles—Long Beach may be contacted on VHF–FM Channel 16 or (310) 521–3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. This rule impacts an area of 500-feet surrounding a cargo vessel while at LBCT, LB Berth E22, and FMS, LA Berth 302, during the months of April and May 2023. This safety zone impacts a 500-foot-radius area of the Port of Los Angeles—Long Beach and the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively for a limited duration. While the safety zone encompasses a seven-day period to account for uncertain transit delays of the M/V ZHEN HUA 26, the safety zone will only be enforced for the duration of the vessel's transit from LBCT, LB Berth E22, to inner anchorage, while at inner anchorage, and transit to FMS, LA Berth 302, and that period will be announced via Broadcast Notice to Mariners. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of the San Pedro Bay, Long Beach and Los Angeles, CA.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves This rule involves a safety zone encompassing an area extending 500-feet out from a cargo vessel in vicinity of Long Beach Container Terminal and Fenix Marine Services and will last only while transfer operations are ongoing. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–123 to read as follows:

§ 165.T11–123 Safety Zone; Port of Los Angeles and Port of Long Beach, San Pedro Bay, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of the Port of Los Angeles and the Port of Long Beach, from surface to bottom, within a circle formed by connecting all points 500-feet out from the vessel, M/V ZHEN HUA 26, during the vessel's transit inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters, respectively.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Los Angeles—Long Beach (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 hailing Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. 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 temporary safety zone will be enforced from April 26, 2023, through May 2, 2023, during the M/V ZHEN HUA 26's transit between Long Beach Container Terminal, LB Berth E22, to inner anchorage, while at inner anchorage and then to Fenix Marine Services, LA Berth 302, or as announced via Broadcast Notice to Mariners.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the enforcement date and times for this safety zone via Local Notices to Mariners.

Dated: April 24, 2023.

R.D. Manning,

Captain, U.S. Coast Guard, Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2023–09120 Filed 4–26–23; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0347]

RIN 1625–AA00

Safety Zone; Pier 15 Fireworks; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay, off of Pier 15, in San Francisco, CA in support of a fireworks display on April 29, 2023. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 11 a.m. until 10:40 p.m. on April 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0347 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT William K. Harris, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415–399–7443, *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until April 17, 2023. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by April 29, 2023, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards associated with the fireworks display off Pier 15 in San Francisco, CA on April 29, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector San Francisco (COTP) has determined that potential hazards associated with the scheduled Pier 15 Fireworks display on April 29, 2023, will be a safety concern for anyone within a 100-foot radius of the fireworks vessel during loading and staging, and anyone within a 300-foot radius of the fireworks vessel starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment on the navigable waters around the fireworks vessel and during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 11 a.m. until 10:40 p.m. on April 29, 2023, during the loading, staging, and transit of the fireworks vessel from Westar Marine Service Pier 50, San Francisco, CA, and until 30 minutes after completion of the fireworks display. During the loading, staging, and transit of the fireworks vessel scheduled to take place between 11 a.m. and 8:30 p.m. on April 29, 2023, until 30 minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel. The fireworks display is scheduled to start at 10 p.m. and end at approximately 10:10 p.m. on April 29, 2023, off Pier 15 within the San Francisco Bay in San Francisco, CA.

At 9:30 p.m., 30 minutes prior to the commencement of the 10-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks vessel, from surface to bottom, within a circle formed by connecting all points 300 feet from the circle center at approximate position 37°48′7.33″ N, 122°23′43.42″ W (NAD 83). The safety zone will terminate at 10:40 p.m. on April 29, 2023, or as announced via Marine Information Broadcast.

This regulation is necessary to keep persons and vessels away from the immediate vicinity of the fireworks loading, staging, transit, and display site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in a restricted area. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the Safety Zone. Tis regulation is necessary to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterways users will be notified to ensure the safety zone will result in minimal impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone in the navigable waters around the loading, staging, transit, and display of fireworks at Westar Marine Service Pier 50 and off of Pier 15 within San Francisco Bay. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–123 to read as follows:

§ 165.T11–123 Safety Zone; Pier 15 Fireworks; San Francisco Bay, San Francisco, CA.

(a) Locations. The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks vessel during loading and staging at Westar Marine Service Pier 50 in San Francisco, CA as well as transit and arrival to the display location off Pier 15, San Francisco Bay in San Francisco CA. Between 9:30 p.m. and 10:40 p.m. on April 29, 2023, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connecting all points 300 feet out from the fireworks vessel in approximate position 37°48′07.33″ N 122°23′43.42″ W (NAD 83) or as announced by Marine Information Bulletin.

(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, or a Federal, State, or local officer designated by or assisting the Captain of the Port (COTP) San Francisco 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) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) Enforcement period. This section will be enforced from 11 a.m. until 10:40 p.m. on April 29, 2023.

(e) Information broadcasts. The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: April 21, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–09000 Filed 4–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XC961]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Sablefish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for sablefish by vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2023 total allowable catch (TAC) of trawl sablefish in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 1, 2023, through 2400 hours, A.l.t., December 31, 2023. Comments must be received at the following address (see **ADDRESSES**) no later than 4:30 p.m., A.l.t., May 10, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0094, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0094 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), NMFS closed directed fishing for trawl sablefish in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI under § 679.20(d)(1)(iii).

As of April 20, 2023, NMFS has determined that approximately 3,364 metric tons (mt) and 1,794 mt of trawl sablefish initial TAC remains unharvested in the Bering Sea subarea and the Aleutian Islands subarea, respectively, of the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2023 TAC of trawl sablefish in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for sablefish by vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of trawl sablefish in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI; and (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for trawl sablefish in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 24, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for trawl sablefish in Bering Sea subarea and the Aleutian Islands subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 10, 2023.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–09044 Filed 4–25–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 82

Friday, April 28, 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.

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Notification of proposed interpretive guidance; request for public comment.

SUMMARY: This proposed interpretive guidance, which would replace the Financial Stability Oversight Council's existing interpretive guidance on nonbank financial company determinations, describes the process the Council intends to take in determining whether to subject a nonbank financial company to supervision and prudential standards by the Board of Governors of the Federal Reserve System.

DATES: *Comment due date:* June 27, 2023.

ADDRESSES: You may submit comments by either of the following methods. All submissions must refer to the document title and RIN 4030–[XXXX].

Electronic Submission of Comments: You may submit comments electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, Attn: Eric Froman, 1500 Pennsylvania Avenue NW, Room 2308, Washington, DC 20220.

All properly submitted comments will be available for inspection and downloading at *https://www.regulations.gov.*

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; Devin Mauney, Office of the General Counsel, Treasury, at (202) 622–2537; or Carol Rodrigues, Office of the General Counsel, Treasury, at (202) 622–6127.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321) (the ''Dodd-Frank Act'') established the Financial Stability Oversight Council. The purposes of the Council under section 112 of the Dodd-Frank Act (12 U.S.C. 5322) are ''(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.''

The Dodd-Frank Act gives the Council broad discretion to determine how to respond to potential threats to U.S. financial stability, and the Council uses each of its statutory authorities as appropriate. The Council's duties under section 112 of the Dodd-Frank Act reflect the range of approaches the Council may consider, including collecting information from regulators, requesting data and analyses from the Office of Financial Research, monitoring the financial services marketplace and financial regulatory developments, facilitating information sharing and coordination among regulators, recommending to the Council member agencies general supervisory priorities and principles, identifying regulatory gaps, making recommendations to the Board of Governors of the Federal Reserve System (''Federal Reserve'') or other primary financial regulatory agencies,[1] and designating certain entities or payment, clearing, and settlement activities for additional regulation.

Section 113 of the Dodd-Frank Act authorizes the Council to determine that a nonbank financial company will be subject to supervision by the Federal Reserve and prudential standards. Under section 165 of the Dodd-Frank Act, the Federal Reserve is responsible for establishing the prudential standards that will be applicable to a nonbank financial company subject to a Council designation [2] under section 113. The Council has previously issued rules, guidance, and other public statements regarding its process for evaluating nonbank financial companies for a potential designation.[3] On April 11, 2012, the Council issued a final rule at 12 CFR 1310.1–23 (the ''2012 Rule'') setting forth certain procedures related to designations under section 113 of the Dodd-Frank Act. Attached to the 2012 Rule as Appendix A was interpretive guidance (the ''2012 Interpretive Guidance'') setting forth additional information regarding the manner in which the Council made determinations under section 113 (together with the 2012 Rule, the ''2012 Rule and Guidance''). On February 4, 2015, the Council adopted supplemental procedures (the ''2015 Supplemental Procedures'') to the 2012 Rule and Guidance.[4] On March 13, 2019, the

[1] ''Primary financial regulatory agency'' is defined in section 2(12) of the Dodd-Frank Act, 12 U.S.C. 5301(12).

[2] Section 113 of the Dodd-Frank Act, 12 U.S.C. 5323, refers to a Council ''determination'' regarding a nonbank financial company. This proposal refers to ''determination'' and ''designation'' interchangeably for ease of reading.

[3] On May 22, 2012, the Council approved hearing procedures relating to the conduct of hearings before the Council in connection with proposed determinations regarding nonbank financial companies and financial market utilities and related emergency waivers or modifications under sections 113 and 804 of the Dodd-Frank Act, 12 U.S.C. 5323, 5463; 77 FR 31855 (May 30, 2012). The hearing procedures were amended in 2013, 78 FR 22546 (April 16, 2013), and 2018, 83 FR 12010 (March 19, 2018). This proposed guidance would not amend the Council's hearing procedures.

[4] Financial Stability Oversight Council Supplemental Procedures Relating to Nonbank

Council amended the 2012 Rule by adding a new provision at 12 CFR 1310.3.[5] On December 30, 2019, the Council replaced the 2012 Interpretive Guidance with revised interpretive guidance (the ''2019 Interpretive Guidance'').[6] In connection with the adoption of the 2019 Interpretive Guidance, the Council rescinded the 2015 Supplemental Procedures.

The Council is proposing this interpretive guidance (the ''Proposed Guidance'') to revise and update the 2019 Interpretive Guidance. If the Council issues final interpretive guidance based on this proposal, the final interpretive guidance will replace the 2019 Interpretive Guidance, found at Appendix A to 12 CFR part 1310, in its entirety but will not modify the rules at 12 CFR 1310.1–23.

The Council is concurrently issuing for public comment a separate document (the Proposed Analytic Framework) explaining the Council's broader approach to identifying, evaluating, and addressing potential risks to U.S. financial stability. The Proposed Analytic Framework describes the Council's analytic approach without regard to the origin of a particular risk, including whether the risk arises from widely conducted activities or from individual entities, and regardless of which of the Council's authorities may be used to address the risk.

II. Overview of Proposed Guidance

A. Key Changes

The Proposed Guidance seeks to establish a durable process for the Council's use of its authority to designate nonbank financial companies. The 2012 Interpretive Guidance provided a crucial framework for the Council's analyses, but because it was adopted before the Council had designated any nonbank financial companies, it could not reflect the lessons learned from engaging in such designations. The 2019 Interpretive Guidance provided additional clarity regarding the Council's procedures but created inappropriate hurdles to the Council's ability to use this authority. Congress created the designation authority to fill a glaring regulatory gap that became apparent during the financial crisis in 2007–09, when financial distress at large, complex, highly interconnected, highly leveraged, and inadequately regulated nonbank financial companies devastated the financial system. The Council has used this authority sparingly, but to mitigate the risks of future financial crises, the Council must be able to use each of its statutory authorities as appropriate to address potential threats to U.S. financial stability. The Proposed Guidance is intended to make this authority available to the Council while maintaining rigorous procedural protections for nonbank financial companies that may be reviewed for potential designation.

The Proposed Guidance would make three key changes. First, the Proposed Guidance would eliminate the statement, found in the 2019 Interpretive Guidance, that the Council would first rely on federal and state regulators to address risks to financial stability before the Council would begin to consider a nonbank financial company for potential designation. The 2019 Interpretive Guidance refers to the Council's reliance on existing regulators as an ''activities-based approach,'' and provides that the Council will prioritize that approach before considering designations.[7] The Council constantly works with federal and state financial regulatory agencies to identify, assess, and respond to risks to financial stability. Nearly all the Council members represent such agencies. Many of the Council's statutory duties relate to promoting interagency collaboration, monitoring financial market developments, facilitating information sharing, and recommending that existing regulators address risks. These activities comprise the foundation of all the Council's work, and under the Proposed Guidance the Council would continue to monitor for activities that pose risks to financial stability and to work with regulators to respond to those risks. Under the Proposed Guidance, the Council would maintain its previous commitment to engaging extensively with existing regulators. The Council considers dozens of potential risks to financial stability every year, as described in its annual reports, and the Council expects that most potential risks to financial stability will continue to be addressed by existing regulators rather than by use of the Council's nonbank financial company designation authority. However, to enable the Council to use its authorities as appropriate, the Proposed Guidance would eliminate the statement in the 2019 Interpretive Guidance that the Council would use an activities-based approach before considering a designation under section 113.

The second fundamental change under the Proposed Guidance is that it is limited to the Council's procedures—rather than substantive analyses—related to nonbank financial company designations. The Council is issuing, for public comment, a separate document explaining the Council's broader approach to identifying, evaluating, and addressing potential risks to U.S. financial stability. The Proposed Analytic Framework describes the Council's analytic approach without regard to the origin of a particular risk, including whether the risk arises from widely conducted activities or from individual entities. It provides new public transparency into how the Council expects to consider any type of risk to financial stability, regardless of which of the Council's authorities may be used to address those risks. Therefore, the Council proposes to rescind the description, set forth in section III of the 2019 Interpretive Guidance, of the Council's analytic approach to evaluating nonbank financial companies under consideration for designation.

The third primary change under the Proposed Guidance, related to its focus on the Council's procedures rather than substantive analyses, is that the Proposed Guidance does not include language, found in the 2019 Interpretive Guidance, stating that the Council would conduct a cost-benefit analysis and an assessment of the likelihood of a firm's material financial distress prior to making a determination under section 113. As explained in greater detail below, the Council believes that these steps are not required by the Dodd-Frank Act, are not useful or appropriate, and unduly hamper the Council's ability to use the statutory authority Congress provided to it.

With respect to the Council's procedures for nonbank financial company designations and annual reevaluations of designations, the Proposed Guidance would make only minor changes. The revisions made in the 2019 Interpretive Guidance related to the Council's procedures for nonbank financial company designations largely reflected the rules and guidance the Council had previously issued, including the 2015 Supplemental Procedures, as well as the Council's

Financial Company Determinations (Feb. 4, 2015), available at *https://home.treasury.gov/system/files/261/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20%20%28February%204%2C%202015%29.pdf.* In addition, in June 2015, the Council published staff guidance with details regarding certain methodologies used in connection with the determination process under section 113. See Council, Staff Guidance Methodologies Relating to Stage 1 Thresholds (June 8, 2015), available at *https://home.treasury.gov/system/files/261/Staff%20Guidance%20Methodologies%20Relating%20to%20Stage%201%20Thresholds.pdf.*

[5] 84 FR 8958 (March 13, 2019).

[6] 84 FR 71740 (Dec. 30, 2019).

[7] See 84 FR 71740, 71761 (Dec. 30, 2019).

practices in its previous designations. Among other things, the Proposed Guidance continues to provide for significant engagement and communication between the Council and a nonbank financial company under review for potential designation, and with the company's primary financial regulatory agency or home-country supervisor. In addition to these existing features, the Proposed Guidance provides further detail on how the Council would identify nonbank financial companies for preliminary evaluation to assess the risks they could pose to U.S. financial stability. The Council believes that under these procedures, the designation process would be rigorous and transparent.[8]

B. Basis for Nonbank Financial Company Determinations

Both the 2012 Interpretive Guidance and the 2019 Interpretive Guidance discussed substantive analytic factors the Council applies in its assessment of nonbank financial companies. The Proposed Guidance is instead limited to the Council's procedures related to nonbank financial company designations and does not include a discussion of the Council's substantive analyses of nonbank financial companies, like the description in section III of the 2019 Interpretive Guidance. The Proposed Guidance does not include that type of discussion because the Council is issuing a separate document—the Proposed Analytic Framework—apart from its guidance on nonbank financial company designations, regarding its approach for identifying and evaluating potential risks to U.S. financial stability. That framework describes the Council's planned analytic approach without regard to either the origin of a particular risk, including whether the risk arises from widely conducted activities or from individual entities, or any potential application of the Council's authorities to mitigate such risks.

In particular, the 2019 Interpretive Guidance describes channels deemed most likely to facilitate the transmission of the negative effects of a nonbank financial company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, to other financial firms and markets; how the complexity and resolvability and existing regulatory scrutiny of a company under consideration for designation may affect the Council's evaluation of the relevant statutory factors; and the Council's interpretation of several statutory terms. For the reasons discussed below, these descriptions do not appear in the Proposed Guidance and would not be included in Appendix A to part 1310.

History illustrates that many factors, such as leverage, liquidity risk, and operational risk, regularly recur in different forms and under different conditions to generate risks to financial stability, and the Proposed Analytic Framework describes vulnerabilities that commonly generate or exacerbate risks to financial stability and the mechanisms by which negative effects can be transmitted more broadly. The Council may consider those risk factors and transmission channels in activities-based reviews, entity-specific analyses, or other work.[9] Accordingly, the Council believes that describing these substantive analytic approaches broadly, rather than in a context limited to nonbank financial company designations, is most appropriate. With respect to nonbank financial company designations specifically, the Dodd-Frank Act sets forth the standard for designations and certain specific considerations that the Council must take into account in making any determination under section 113. The Council will apply the statutory standard and considerations in any evaluation of a nonbank financial company for potential designation.

The 2019 Interpretive Guidance also provides the Council's interpretation of several statutory terms not defined in the Dodd-Frank Act, including ''company,'' ''nonbank financial company supervised by the Board of Governors,'' and ''material financial distress''—that the Council proposes to retain and has incorporated into the Proposed Guidance. However, the Council believes the 2019 Interpretive Guidance's interpretation of ''threat to the financial stability of the United States'' as meaning ''the threat of an impairment of financial intermediation or of financial market functioning that would be sufficient to inflict severe damage on the broader economy''[10] is inappropriate. That definition, which requires the Council to determine that the economy ''would'' be severely damaged, contrasts sharply with the statutory standard under section 113 of the Dodd-Frank Act, which calls on the Council to determine whether there ''could'' be a threat to financial stability.[11] Moreover, the Council's statutory purpose ''to respond to emerging threats to the stability of the United States financial system'' indicates that the Council must address threats that may impair the financial system before they are realized. The nature of financial crises is that the precise severity of harm posed by emerging threats may not be apparent until it is too late. Accordingly, the Proposed Guidance does not include this definition. For purposes of analyses under section 113, the Council would expect to evaluate a ''threat to the financial stability of the United States'' with reference to the description of financial stability provided in the Proposed Analytic Framework.

Questions for Comment

1. Does the proposal described above not to include in the interpretive guidance a description of the Council's substantive analytic approach to evaluating nonbank financial companies in the context of a designation under section 113 of the Dodd-Frank Act, in favor of a separate framework that describes the Council's analytic approach without regard to the origin of a particular risk or the authority the Council may use to mitigate such risk, allow the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

2. Are there additional statutory terms beyond ''company,'' ''nonbank financial company supervised by the Board of Governors,'' and ''material financial distress'' for which the Council should set forth its interpretation in the Proposed Guidance?

3. Would the Council's elimination of the 2019 Interpretive Guidance's

[8] In accordance with the Council's bylaws, the Council may delegate authority, including to its Deputies Committee, to implement and take any actions under the guidance, except with respect to actions that are expressly nondelegable under the Dodd-Frank Act, the Council's bylaws, or the guidance.

[9] The Council has long noted that the identified transmission channels are non-exhaustive. See 2019 Interpretive Guidance, 84 FR 71763 (December 30, 2019) (''The transmission channels . . . set forth below are not exhaustive and may not apply to all nonbank financial companies under evaluation. . . . The Council may also consider other relevant channels through which risks could be transmitted from a particular nonbank financial company and thereby pose a threat to U.S. financial stability.''); see also 2012 Interpretive Guidance, 77 FR 21637, 21657 (April 11, 2012) (''The Council intends to continue to evaluate additional transmission channels and may, at its discretion, consider other channels through which a nonbank financial company may transmit the negative effects of its material financial distress or activities and thereby pose a threat to U.S. financial stability.'').

[10] See 84 FR 71763 (December 30, 2019). The definition of this term in the 2019 Interpretive Guidance imposed a higher threshold than the Council's previous interpretation of this term under the 2012 Interpretive Guidance.

[11] See also Dodd-Frank Act section 112(a)(2)(C) (setting forth the Council's duty to ''require [enhanced] supervision . . . for nonbank financial companies that *may* pose risks to . . . financial stability'' (emphasis added)).

interpretation of ''threat to the financial stability of the United States'' as meaning ''the threat of an impairment of financial intermediation or of financial market functioning that would be sufficient to inflict severe damage on the broader economy'' enable it to achieve its statutory purposes? When the Council interprets the statutory phrase ''threat to the financial stability of the United States,'' are there additional factors it should consider?

C. Activities-Based Approach

The 2019 Interpretive Guidance states that the Council will prioritize its efforts to identify, assess, and address potential risks and threats to U.S. financial stability through a process that begins with an ''activities-based approach,'' and that the Council will pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk or threat cannot be adequately addressed through an activities-based approach. As explained in the 2019 Interpretive Guidance, an activities-based approach means an approach in which the Council seeks to address potential risks to financial stability using an authority other than nonbank financial company designations.

The Proposed Guidance removes this prioritization among the Council's authorities, clarifying that the Council may use any of its statutory authorities, as appropriate, to address risks and threats to U.S. financial stability. As noted above, the Council will continue to monitor for activities that pose risks to financial stability and work with regulators to respond to those risks. Appropriate actions to respond to a particular risk depend on the nature of the risk. For example, vulnerabilities originating from activities that are widely conducted in a particular sector or market may be well-suited for activity-based or industry-wide regulation. In contrast, where distress at one entity could threaten financial stability, or where risks arising from a particular financial company could threaten financial stability, entity-based regulation may be appropriate. The Dodd-Frank Act gives the Council a range of authorities and broad discretion to determine how to respond to potential threats to U.S. financial stability. The Council stated in the 2019 Interpretive Guidance that it intended to use a prioritization scheme found nowhere in the Dodd-Frank Act, under which the Council would generally seek to use certain of its authorities before others. Consistent with the Council's statutory purpose to respond to emerging threats to U.S. financial stability, the Proposed Guidance would remove this prioritization, allowing the Council the flexibility to use the most appropriate tool for addressing potential risks. For example, the Proposed Guidance makes clear that the Council could consider using its section 113 designation authority when material financial distress at a nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of a nonbank financial company, could pose a threat to U.S. financial stability, as appropriate, without first needing to consider other approaches.

The Council's history provides instructive examples of the Council's use of different authorities and approaches for different types of risks. For example, the Council has taken an activities-based approach in recommending actions to address risks relating to crypto-assets, climate-related financial risks, and other topics. In 2012, the Council used an activities-based approach in issuing for public comment proposed recommendations for money market mutual fund reforms. Further, all of the Council's annual reports have identified and recommended actions regarding various risks to U.S. financial stability,[12] many in the form of an activities-based approach. The Council has also used entity-specific approaches in designating eight financial market utilities under Title VIII of the Dodd-Frank Act and in designating four nonbank financial companies in 2013 and 2014 under section 113 of the Dodd-Frank Act.

Financial crises have illustrated the importance of ensuring that the Council can exercise its authorities as needed. For example, the 2007–09 financial crisis showed that material financial distress at a small number of large, interconnected, and highly leveraged nonbank financial companies could threaten the stability of the U.S. financial system. Based in part on that experience, Congress created the Council and gave it a mandate to address risks that arise in the future. Under the Proposed Guidance, the Council would retain flexibility to address risks and threats to U.S. financial stability using whichever authorities are appropriate for the circumstances.

Consistent with the modifications described above, the Proposed Guidance provides additional detail on how the Council would identify nonbank financial companies for preliminary evaluation to assess the risks they could pose to U.S. financial stability (referred to as ''Stage 1''). The 2019 Interpretive Guidance, in accordance with the activities-based approach, provided that the Council could evaluate a company for designation if a company's primary financial regulatory agency did not adequately address a potential risk identified by the Council. The Proposed Guidance instead explains the process by which the Council's staff-level committees would preliminarily identify and assess potential risks to U.S. financial stability using the analytical methods described in the Council's separately issued Proposed Analytic Framework. This approach seeks to strengthen the Council's ability to monitor, assess, and mitigate risks to U.S. financial stability, regardless of whether those risks originate from individual companies or widely conducted activities, while providing flexibility for the Council to adapt to circumstances that may rapidly evolve.

[12] See, *e.g.,* FSOC, 2022 Annual Report (2022), available at *https://home.treasury.gov/system/files/261/FSOC2022AnnualReport.pdf.*

Questions for Comment

4. Would removal of the prioritization of the ''activities-based approach'' from the interpretive guidance enable the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

5. Are there additional steps the Council should take to ensure all of its authorities for addressing potential risks to U.S. financial stability are equally available and appropriately exercised?

6. Would the proposed staff-level process for identifying nonbank financial companies for preliminary evaluation enable the Council to achieve its statutory purposes? Does the Proposed Guidance identify the appropriate procedures the Council should follow as it considers a company for potential designation? Are there other means of identifying companies for preliminary review the Council should consider, such as the application of specific metrics for different sectors of the nonbank financial system?

7. If the Council were to establish a set of uniform quantitative metrics to identify nonbank financial companies for further evaluation, as it did through the Stage 1 thresholds in the 2012 Interpretive Guidance, what metrics should the Council consider?

D. Cost-Benefit Analysis and Likelihood of Material Financial Distress

The 2019 Interpretive Guidance states, ''The Council will make a determination under section 113 only if

the expected benefits to financial stability from Federal Reserve supervision and prudential standards justify the expected costs that the determination would impose. As part of this analysis, the Council will assess the likelihood of a firm's material financial distress, in order to assess the extent to which a determination may promote U.S. financial stability.'' The Proposed Guidance does not include this language, as discussed below.

Cost-Benefit Analysis. The Dodd-Frank Act does not require a cost-benefit analysis prior to the designation of a nonbank financial company under section 113. Rather, the statute instructs the Council to designate a nonbank financial company if the Council ''determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.''[13] Subsection 113(a)(2) of the Dodd-Frank Act lists 10 factors the Council must consider when making a determination, such as the company's leverage, transactions with other financial companies, assets under management, and existing regulation.[14]

The costs and benefits of a designation are not listed considerations in the statute and are not similar to any of the listed considerations. The statute is clear that the only required considerations are related to the potential impact the company's material financial distress or activities could pose to U.S. financial stability. While Congress granted the Council discretion to consider other factors it ''deems appropriate,'' these too must be ''risk-related.''[15] The Council acknowledges that there may be costs associated with a designation or the resulting Federal Reserve supervision; however the Council does not consider the potential cost of a designation or of the resulting Federal Reserve supervision and prudential standards to be a ''risk-related factor.'' The Council believes that the statutory reference to a ''risk-related factor'' instead should be interpreted, consistent with the statutory standard for designation and the expressly enumerated considerations, as meaning a factor related to the risk to U.S. financial stability posed by the company or the company's activities.[16] Moreover, costs incurred by a designated nonbank financial company to comply with prudential standards established by the Federal Reserve would not increase the risk posed by the company or its activities because they are incurred for the purpose of increasing the safety and soundness of the company. For example, risk-based capital requirements, leverage limits, or liquidity requirements would reduce the risk the company poses to the financial system.

The text of section 113 indicates that Congress itself determined that the potential costs of designation are outweighed by the benefits—mitigating risks to financial stability—if the company meets the statutory standard, based on the considerations Congress identified. That is, Congress's legislative judgment was that if, based on the Council's consideration of the factors listed in section 113, a nonbank financial company ''could pose a threat to the financial stability of the United States,'' then the benefits of a designation outweigh the costs.[17]

Further, even if the potential cost of designation were a ''risk-related factor,'' the Council does not believe that prescribing a cost-benefit analysis prior to a determination under section 113 is useful or appropriate. This is in part because it is not feasible to estimate with any certainty the likelihood, magnitude, or timing of a future financial crisis. The costs imposed by the potential failure of a nonbank financial company will depend on the state of the economy and financial system at the time. The benefits of designation are potentially enormous and, in many respects, incalculable, representing the tangible and intangible gains that come from averting a financial crisis and economic catastrophe. The costs of any particular future financial crisis, and thus the benefits of its prevention through designation or other measures, cannot be predicted. Even estimates of the costs of past crises, in terms of reductions in gross domestic product, greater government expenses, increases in unemployment, or other factors, vary widely but can be measured in the trillions of dollars. Moreover, the Dodd-Frank Act directs the Federal Reserve to adopt regulatory requirements applicable to a designated nonbank financial company. The cost to a company of designation will depend critically on the applicable regulatory regime. Generally, specific regulatory requirements for designated nonbank financial companies have been determined after the designation, in order to enable the requirements to be appropriately tailored to risks posed by the company. As such, evaluating the potential costs and benefits of a designation with reasonable specificity is not possible before a designation, and it is unlikely that performing a cost-benefit analysis for a nonbank financial company would yield a balanced picture.

Likelihood of Material Financial Distress. Under the Proposed Guidance, the Council would not assess the likelihood of a company's material financial distress in considering a nonbank financial company under section 113. Similar to the language regarding a cost-benefit analysis, the Council does not believe an assessment of the likelihood of a company's material financial distress is required or appropriate.[18]

The Dodd-Frank Act charges the Council with designating a company under section 113 if it ''determines that material financial distress at the U.S. nonbank financial company . . . could pose a threat to the financial stability of the United States.''[19] Under this first prong of the statutory determination standard, the Council is instructed to determine whether material financial

[13] 12 U.S.C. 5323(a)(1).

[14] *Id.* 5323(a)(2).

[15] Dodd-Frank Act section 113(a)(2)(K), 12 U.S.C. 5323(a)(2)(K).

[16] The U.S. District Court for the District of Columbia held that the Council should have considered the potential costs of designation before designating MetLife, Inc. under section 113, but the Court's reasoning assumes that a company's likelihood of material financial distress is itself a required consideration under the Council's guidance in effect at that time. See *MetLife Inc.* v. *Financial Stability Oversight Council* (*MetLife*), 177 F. Supp. 3d 219, 239–42 (D.D.C. 2016) (discussing company's argument that ''imposing billions of dollars in cost could actually make MetLife more vulnerable to distress''). The government appealed the district court's decision in 2016, but agreed to dismiss its appeal in 2018. In the final settlement agreement between the Council and MetLife, the Council maintained that its designation of MetLife complied with applicable law. In the agreement MetLife expressly waived any right to argue that the cost-benefit portion of the district court's opinion had any preclusive effect in any future proceeding before the Council or in any subsequent litigation. Under the Proposed Guidance, the likelihood of a company's material financial distress would not be a consideration in a designation under section 113.

[17] See also Dodd-Frank Act section 112, 12 U.S.C. 5322(a)(2)(H) (providing that ''[t]he Council *shall* . . . require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities . . .'' (emphasis added)).

[18] In its *MetLife* decision, the U.S. District Court for the District of Columbia held that the Council's failure to assess the likelihood of MetLife's material financial distress was contrary to the 2012 Interpretive Guidance. 177 F. Supp. 3d at 233–39. This prong of the District Court's holding would not apply under the Proposed Guidance, which does not require any such assessment.

[19] 12 U.S.C. 5323(a)(1).

distress at the company could pose a threat to U.S. financial stability. Thus, pursuant to section 113, the Council presupposes a company's material financial distress, and then evaluates what consequences could follow for U.S. financial stability. The first determination standard, by its terms, does not require the Council first to analyze the likelihood of a company experiencing material financial distress before determining whether such distress could threaten U.S. financial stability. Section 112 of the Dodd-Frank Act further underscores the statutory standard, making clear that the Council's duty is to designate nonbank financial companies that could threaten U.S. financial stability ''in the event of their material financial distress or failure''—not based on the Council's estimation of the likelihood of such distress or failure.[20] Therefore, the language in the 2019 Interpretive Guidance regarding this factor fits poorly with the statutory standard.[21]

Further, the designation authority in section 113 is preventative and is meant to ''respond to emerging threats to the stability of the United States financial system,'' consistent with the Council's purpose.[22] Waiting to act until there is a reasonable likelihood of a company's failure would negate the purpose of the Council's designation authority, which is to mitigate risks before they threaten financial stability. The designation process under the Proposed Guidance would be a time-intensive exercise, and even once a company is designated, the Federal Reserve may then need to develop and implement prudential standards for the company. Such prudential standards, which may include capital and liquidity requirements, risk-management standards, and the development of resolution plans, are intended to prevent or mitigate risks to financial stability. For these tools to be most effective, they must be in place well before material financial distress appears to be likely.

There are good reasons that Congress chose not to require the Council to determine the likelihood of a nonbank financial company's material financial distress. A financial company can go from seemingly healthy to in danger of imminent collapse in a matter of months, weeks, or even days. For example, at the end of August 2008, Lehman Brothers had reported shareholder equity—which is a measure of solvency—of $28 billion.[23] On September 12, 2008 ''experts from the country's biggest commercial investment banks . . . could not agree whether or not'' Lehman Brothers was solvent.[24] Only two days later, on Monday, September 14, 2008, Lehman Brothers declared bankruptcy. The failures of Silicon Valley Bank and Signature Bank in March 2023 further underscored how quickly and unexpectedly an institution can become insolvent. For designation to strengthen the financial system, it must be deployed early enough that companies have time to take actions to bolster their safety and soundness, which in turn supports financial stability—something that can take several years.

Finally, if designation requires an assessment of the likelihood of material financial distress at the company, public awareness of designation (or its mere possibility) could create a run on the company by its creditors and counterparties. This is an important reason why bank supervisory ratings are confidential, in acknowledgement of the risk that disclosure of material issues at a company could trigger a run on the company. Thus, a designation that includes an assessment of the likelihood of material financial distress at the company could accelerate the company's demise and thereby threaten financial stability and undermine the purpose of the designation.

Questions for Comment

8. Does the Council's proposal described above to remove from the interpretive guidance provisions the discussion of the Council conducting a cost-benefit analysis and assessing the likelihood of a company's material financial distress allow the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

9. Are there additional points the Council should consider regarding the usefulness, practicality, or feasibility of conducting a cost-benefit analysis regarding the designation of a company under section 113?

10. What data or factors should the Council consider in evaluating the potential risk to U.S. financial stability that could be posed by the failure of a company, should that company experience material financial distress?

11. If the Council were to identify a nonbank financial company as likely to experience material financial distress, what, if any, effects would such identification have when it became public knowledge?

III. Legal Authority of Council and Status of the Proposed Guidance

The Council has numerous authorities and tools under the Dodd-Frank Act to carry out its statutory purposes.[25] The Council expects that its response to any potential risk or threat to U.S. financial stability will be based on an assessment of the circumstances. As the agency charged by Congress with broad-ranging responsibilities under sections 112 and 113 of the Dodd-Frank Act, the Council has the inherent authority to promulgate interpretive guidance under those provisions that explains and interprets the steps the Council will take when undertaking the determination process.[26] The Council also has authority to issue procedural rules[27] and policy statements.[28] The Proposed Guidance provides transparency to the public as to how the Council intends to exercise its statutory grant of discretionary authority. Except to the extent that the Proposed Guidance sets forth rules of agency organization, procedure, or practice, the Council has concluded that the Proposed Guidance does not have binding effect; does not impose duties on, or alter the rights or interests of, any person; does not change the statutory standards for the Council's decision making; and does not relieve the Council of the need to make entity-specific determinations in accordance with section 113 of the Dodd-Frank Act. The Proposed Guidance also does not limit the ability of the Council to take emergency action under section 113(f) of the Dodd-Frank Act if the Council determines that such action is necessary

[20] 12 U.S.C. 5322(a)(2)(H).

[21] The Council for many years consistently expressed the view that the 2012 Interpretive Guidance did not contemplate the consideration of the likelihood of a nonbank financial company's material financial distress. The 2019 Interpretive Guidance altered the Council's approach. The Proposed Guidance would conform to the Council's original understanding that this factor should not be taken into account.

[22] See Dodd-Frank Act section 112(a)(1)(c), 12 U.S.C. 5322(a)(1)(c).

[23] Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report at 324 (2011), available at *https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[24] Id.

[25] See, for example, Dodd-Frank Act sections 112(a)(2), 113, 115, 120, 804, 12 U.S.C. 5322(a)(2), 5323, 5325, 5330, 5463.

[26] Courts have recognized that ''an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion.'' See, for example, *Production Tool* v. *Employment & Training Administration,* 688 F.2d 1161, 1166 (7th Cir. 1982). The Supreme Court has acknowledged that ''whether or not they enjoy any express delegation of authority on a particular question, agencies charged with applying a statute necessarily make all sorts of interpretive choices.'' See *U.S.* v. *Mead,* 533 U.S. 218, 227 (2001).

[27] See Dodd-Frank Act section 111(e)(2), 12 U.S.C. 5321(e)(2).

[28] See *Association of Flight Attendants-CWA, AFL–CIO* v. *Huerta,* 785 F.3d 710 (D.C. Cir. 2015).

or appropriate to prevent or mitigate threats posed by a nonbank financial company to U.S. financial stability. As a result, the Council has concluded that the notice and comment requirements of the Administrative Procedure Act would not apply.[29] However, under the Council's rule in 12 CFR 1310.3, the Council voluntarily committed that it would not amend or rescind Appendix A to part 1310 without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553.[30] Consequently, the Council invites interested persons to submit comments regarding the Proposed Guidance.

IV. Paperwork Reduction Act

The Proposed Guidance is not expected to alter the collections of information previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1505–0244. Nonetheless, the Council provides the estimated burdens of the information collections associated with the Proposed Guidance and invites comments below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information under the Proposed Guidance is found in 12 CFR 1310.20–23.

The hours and costs associated with preparing data, information, and reports for submission to the Council constitute reporting and cost burdens imposed by the collection of information. The estimated total annual reporting burden associated with the collection of information in the Proposed Guidance is 20 hours, based on an estimate of 1 respondent. We estimate the cost associated with this information collection to be $9,000.

In making this estimate, the Council estimates that due to the nature of the information likely to be requested, approximately 75 percent of the burden in hours will be carried by financial companies internally at an average cost of $400 per hour, and the remainder will be carried by outside professionals retained by financial companies at an average cost of $600 per hour. In addition, in determining these estimates, the Council considered its obligation under 12 CFR 1310.20(b) to, whenever possible, rely on information available from the Office of Financial Research or any Council member agency or primary financial regulatory agency that regulates a nonbank financial company before requiring the submission of reports from such nonbank financial company. The Council expects that its collection of information under the Proposed Guidance would be performed in a manner that attempts to minimize burdens for affected financial companies. The aggregate burden will be subject to the number of financial companies that are evaluated in the determination process, the extent of information regarding such companies that is available to the Council through existing public and regulatory sources, and the amount and types of information that financial companies provide to the Council.

Interested persons are invited to submit comments regarding the estimates provided in this section. Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Financial Stability Oversight Council, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Samantha MacInnis, Department of the Treasury, Washington, DC 20220. Comments on the collection of information must be received by June 27, 2023.

Comments are specifically requested concerning:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Council, including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information;

(3) How the quality, utility, and clarity of the information to be collected may be enhanced;

(4) How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

V. Executive Orders 12866, 13563, and 14094

Executive Orders 12866, 13563 and 14094 direct certain agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Pursuant to section 3(f) of Executive Order 12866, the Office of Information and Regulatory Affairs within the Office of Management and Budget has determined that the Proposed Guidance is a ''significant regulatory action''. Accordingly, the Proposed Guidance has been reviewed by the Office of Management and Budget.

List of Subjects in 12 CFR Part 1310

Brokers, Investments, Securities.

The Financial Stability Oversight Council proposes to amend 12 CFR part 1310 as follows:

PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

■ 2. Appendix A is revised to read as follows:

Appendix A to Part 1310—Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

I. Introduction

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)[31] authorizes the Financial Stability Oversight Council (the Council) to determine that a nonbank financial company will be supervised by the Board of Governors of the Federal Reserve System (the Federal Reserve Board) and be subject to prudential standards, in accordance with Title I of the Dodd-Frank Act, if either (1) the Council determines that material financial distress at the nonbank financial company could pose a threat to U.S. financial stability, or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability. Section 113 of the Dodd-Frank Act lists the considerations that the Council must take into account in making a determination. This guidance supplements the Council's rule

[29] See 5 U.S.C. 553(b)(A); 12 CFR 1310.3.

[30] Section 1310.3 does not apply to the Council's issuance of rules, guidance, procedures, or other documents that do not amend or rescind Appendix A. Thus, other Council materials, and documents that are referred to in but are not a part of the Proposed Guidance, such as the Council's separately issued Proposed Analytic Framework, hearing procedures, bylaws, and committee charters, are not subject to section 1310.3's requirements.

[31] See Dodd-Frank Act section 113, 12 U.S.C. 5323.

regarding nonbank financial company determinations.[32]

Section II of this appendix outlines a two-stage process that the Council generally expects to follow when determining whether to subject a nonbank financial company to Federal Reserve Board supervision and prudential standards.[33] Section III sets forth the process the Council expects to follow in conducting reevaluations of its previous determinations.

II. Process for Nonbank Financial Company Determinations

Under section 113 of the Dodd-Frank Act, the Council may evaluate a nonbank financial company [34] for an entity-specific determination. This section describes the process the Council expects to follow in general for those reviews.

a. Overview of the Determination Process

As described in detail below, the Council expects generally to follow a two-stage process of evaluation and analysis when evaluating a nonbank financial company under section 113 of the Dodd-Frank Act. During the first stage of the process (Stage 1), a nonbank financial company identified for review will be notified and subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will permit, but not require, the company to submit relevant information. The Council will also consult with the company's primary financial regulatory agency [35] or home country supervisor, as appropriate. This approach will enable the Council to fulfill its statutory obligation to rely whenever possible on information available through the Office of Financial Research (the OFR), Council member agencies, or the nonbank financial company's primary financial regulatory agencies before requiring the submission of reports from any nonbank financial company.[36]

Following Stage 1, any nonbank financial company that is selected for additional review will receive notice that it is being considered for a proposed determination that the company will be supervised by the Federal Reserve Board and be subject to prudential standards under Title I of the Dodd-Frank Act (a Proposed Determination) and that the company will be subject to in-depth evaluation during the second stage of review (Stage 2). Stage 2 will also involve the evaluation of additional information collected directly from the nonbank financial company. At the end of Stage 2, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If the Council makes a Proposed Determination, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule regarding nonbank financial company determinations.[37] After making a Proposed Determination and holding any written or oral hearing if requested, the Council may vote to make a final determination (a Final Determination).

b. Stage 1: Preliminary Evaluation of Nonbank Financial Companies

Stage 1 involves a preliminary analysis of nonbank financial companies to assess the risks they could pose to U.S. financial stability. In light of the preliminary nature of a review in Stage 1, the Council expects that not all companies reviewed in Stage 1 will proceed to Stage 2 or a Final Determination.

Identification of Company for Review in Stage 1

The Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. The Council's staff-level committees are responsible for monitoring and analyzing financial markets, financial companies, the financial system, and issues related to financial stability. These committees monitor a broad range of asset classes, institutions, and activities, as described in the Council's Framework for Financial Stability Risk Identification, Assessment, and Response (the Analytic Framework), and as reflected in the Council's annual reports. In assessing potential risks, these committees consider the vulnerabilities and types of metrics described in the Analytic Framework. These committees, in the course of their duties, will monitor each sector of the financial system at least annually and will report to the Deputies Committee [38] regarding potential risks to U.S. financial stability that they identify. With respect to these monitoring and reporting activities, the Council's Systemic Risk Committee is responsible for monitoring and reporting on each financial sector, including information on identified firms and activities that may pose risks that merit further review, unless another Council committee or working group provides such updates to the Deputies Committee on a particular sector. The updates to the Deputies Committee will use applicable metrics as described in the Analytic Framework. The Deputies Committee is responsible for directing, coordinating, and overseeing the work of the Systemic Risk Committee and all of the Council's other staff-level committees and working groups in accordance with this guidance. If an identified risk relates to one or more financial companies that may merit review in the context of a potential determination under section 113, the Council may review those companies in Stage 1. Alternatively, the Deputies Committee may direct a staff-level committee or working group to further assess the identified risks, including consideration of whether the risks could be addressed by a designation under section 113 or by use of a different Council authority, such as recommendations to existing regulators. The Deputies Committee may also direct the Council's Nonbank Financial Companies Designations Committee (the Nonbank Designations Committee) [39] to conduct an initial analysis of the companies based on the risk-assessment approach described in the Analytic Framework. The purpose of such an analysis by the Nonbank Designations Committee would be to further inform the determination regarding whether one or more companies should be reviewed in Stage 1, if needed. Following any such analysis by the Nonbank Designations Committee, the Council may review one or more companies in Stage 1. Any Council committee's identification, reporting, direction, analysis, or recommendation described in this paragraph will be made in accordance with such committee's bylaws or charter.

When evaluating the potential risks associated with a nonbank financial company, the Council may consider the company and its subsidiaries separately or together. This approach enables the Council to consider potential risks arising across the entire organization, while retaining the ability to make a determination regarding either the parent or any individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.

[32] See 12 CFR part 1310.

[33] The Council may waive or modify this process in its discretion if it determines that emergency circumstances exist, including if necessary or appropriate to prevent or mitigate threats posed by a nonbank financial company to U.S. financial stability in accordance with section 113(f) of the Dodd-Frank Act.

[34] The Council intends to interpret the term ''company'' to include any corporation, limited liability company, partnership, business trust, association, or similar organization. See Dodd-Frank Act section 102(a)(4), 12 U.S.C. 5311(a)(4). In addition, the Council intends to consider any nonbank financial company to be subject to a final determination of the Council if the company acquires, directly or indirectly, a majority of the assets or liabilities of a company that is subject to a final determination of the Council. As a result, if a nonbank financial company subject to a final determination of the Council sells or otherwise transfers a majority of its assets or liabilities, the acquirer will succeed to, and become subject to, the Council's determination. As discussed in section III below, a nonbank financial company that is subject to a final determination of the Council may request a reevaluation of the determination before the next required annual reevaluation, in an appropriate case. Such an acquirer can use this reevaluation process to seek a rescission of the determination upon consummation of its transaction.

[35] See Dodd-Frank Act section 2(12), 12 U.S.C. 5301(12). In each stage of the Council's process under section 113 of the Dodd-Frank Act, the Council may also consult with, solicit information from, or coordinate with other state or federal financial regulatory agencies that have jurisdiction over the nonbank financial company or its activities.

[36] See Dodd-Frank Act section 112(d)(3), 12 U.S.C. 5322(d)(3).

[37] See 12 CFR 1310.21(c).

[38] The Council's Deputies Committee is composed of senior officials from each Council member and member agency. See Bylaws of the Deputies Committee of the Financial Stability Oversight Council, available at *https://fsoc.gov.*

[39] The Nonbank Designations Committee supports the Council in fulfilling the Council's responsibilities to consider, make, and review Council determinations regarding nonbank financial companies under section 113 of the Dodd-Frank Act. See Charter of the Nonbank Financial Companies Designations Committee of the Financial Stability Oversight Council, available at *https://fsoc.gov.*

Engagement With Company and Regulators in Stage 1

The Council will provide a notice to any nonbank financial company under review in Stage 1 no later than 60 days before the Council votes on whether to evaluate the company in Stage 2. In Stage 1, the Council will consider available public and regulatory information. In order to reduce the burdens of review on the company, the Council will not require the company to submit information during Stage 1; however, a company under review in Stage 1 may submit to the Council any information relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis. The Council may request a page-limited summary of the company's submissions. In addition, staff representing the Council will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 1 analysis, so that the company has an opportunity to understand the information the Council may rely upon during Stage 1. In addition, during discussions in Stage 1 with the company, the Council intends for representatives of the Council to indicate to the company potential risks that have been identified in the analysis. However, any potential risks identified at this stage are preliminary and may continue to develop until the Council makes a Final Determination. Through this engagement, the Council seeks to provide the company under review an opportunity to understand the focus of the Council's analysis.

The Council will also consider in Stage 1 information available from relevant existing regulators of the company. Under the Dodd-Frank Act, the Council is required to consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any Final Determination with respect to such company.[40] For any company under review in Stage 1 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will notify the regulator or supervisor that the company is under review no later than the time the company is notified. The Council will also consult with the primary financial regulatory agency, if any, of each significant subsidiary of the nonbank financial company, to the extent the Council deems appropriate in Stage 1. The Council will actively solicit the regulator's views regarding risks at the company and potential mitigants or aggravating factors. In order to enable the regulator to provide relevant information, the Council will share its preliminary views regarding potential risks at the company, if any and to the extent practicable, and request that the regulator provide information regarding those specific risks, including the extent to which the risks are adequately mitigated by factors such as existing regulation or the company's business practices. During the determination process, the Council will encourage the regulator to address any risks to U.S. financial stability using the regulator's existing authorities; if the Council believes regulators' or the company's actions have adequately addressed the potential risks to U.S. financial stability the Council has identified, the Council may discontinue its consideration of the company for a potential determination under section 113 of the Dodd-Frank Act.

Based on the preliminary evaluation in Stage 1, the Council, on a nondelegable basis, may vote to commence a more detailed analysis of the company by advancing the company to Stage 2, or it may decide not to evaluate the company further. If the Council votes not to advance a company that has been reviewed in Stage 1 to Stage 2, the Council will notify the company in writing of the Council's decision. The notice will clarify that a decision not to advance the company from Stage 1 to Stage 2 at that time does not preclude the Council from reinitiating review of the company in Stage 1.

c. Stage 2: In-Depth Evaluation

Stage 2 involves an in-depth evaluation of a nonbank financial company that the Council has determined merits additional review.

In Stage 2, the Council will review a nonbank financial company using information collected directly from the company, through the OFR, as well as public and regulatory information. The review will focus on whether material financial distress[41] at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to U.S. financial stability. The Analytic Framework describes the Council's approach to evaluating potential risks to U.S. financial stability, including in the context of a review under section 113 of the Dodd-Frank Act.

Engagement With Company and Regulators in Stage 2

A nonbank financial company to be evaluated in Stage 2 will receive a notice (a Notice of Consideration) that the company is under consideration for a Proposed Determination. The Council also will submit to the company a request that the company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.[42] This information will generally be collected by the OFR.[43] Before requiring the submission of reports from any nonbank financial company that is regulated by a Council member agency or a primary financial regulatory agency, the Council, acting through the OFR, will coordinate with such agencies and will, whenever possible, rely on information available from the OFR or such agencies. Council members and their agencies and staffs will maintain the confidentiality of such information in accordance with applicable law. During Stage 2, the company may also submit any other information that it deems relevant to the Council's evaluation. Information that may be considered by the Council includes details regarding the company's financial activities, legal structure, liabilities, counterparty exposures, resolvability, and existing regulatory oversight. Information requests likely will involve both qualitative and quantitative information. Information relevant to the Council's analysis may include confidential business information such as detailed information regarding financial assets, terms of funding arrangements, counterparty exposure or position data, strategic plans, and interaffiliate transactions.

The Council will make staff representing Council members available to meet with the representatives of any company that enters Stage 2, to explain the evaluation process and the framework for the Council's analysis. In addition, the Council expects that its Deputies Committee will grant a request to meet with a company in Stage 2 to allow the company to present any information or arguments it deems relevant to the Council's evaluation. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those specific aspects, although the areas of analytic focus may change based on the ongoing analysis.

During Stage 2 the Council will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes a Proposed or Final Determination with respect to the company. The Council will continue to encourage the regulator during the determination process to address any risks to U.S. financial stability using the regulator's existing authorities; as noted above, if the Council believes regulators' or the company's actions adequately address the potential risks to U.S. financial stability the Council has identified, the Council may discontinue its consideration of the company for a potential determination under section 113 of the Dodd-Frank Act.

Before making a Proposed Determination regarding a nonbank financial company, the Council will notify the company when the Council believes that the evidentiary record regarding the company is complete. The Council will notify any nonbank financial company in Stage 2 if the company ceases to be considered for a determination. Any nonbank financial company that ceases to be considered at any time in the Council's determination process may be considered for a Proposed Determination in the future at the Council's discretion, consistent with the processes described above.

d. Proposed and Final Determination

Proposed Determination

Based on the analysis performed in Stage 2, a nonbank financial company may be considered for a Proposed Determination. A Proposed Determination requires a vote, on a

[40] Dodd-Frank Act section 113(g), 12 U.S.C. 5323(g).

[41] The Council intends to interpret the term "material financial distress" as a nonbank financial company being in imminent danger of insolvency or defaulting on its financial obligations.

[42] See 12 CFR 1310.21(a).

[43] See Dodd-Frank Act section 112(d), 12 U.S.C. 5322(d).

nondelegable basis, of two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council.[44] Following a Proposed Determination, the Council will issue a written notice of the Proposed Determination to the nonbank financial company, which will include an explanation of the basis of the Proposed Determination.[45] Promptly after the Council votes to make a Proposed Determination regarding a company, the Council will provide the company's primary financial regulatory agency or home country supervisor with the nonpublic written explanation of the basis of the Council's Proposed Determination (subject to appropriate protections for confidential information).

Hearing

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act. If the nonbank financial company requests a hearing in accordance with the procedures set forth in § 1310.21(c) of the Council's rule,[46] the Council will set a time and place for such hearing. The Council has published hearing procedures on its website.[47] In light of the statutory timeframe for conducting a hearing, and the fact that the purpose of the hearing is to benefit the company, if a company requests that the Council waive the statutory deadline for conducting the hearing, the Council may do so in appropriate circumstances.

Final Determination

After making a Proposed Determination and holding any requested written or oral hearing, the Council, on a nondelegable basis, may, by a vote of not fewer than two-thirds of the voting members of the Council then serving (including an affirmative vote by the Chairperson of the Council), make a Final Determination that the company will be subject to supervision by the Federal Reserve Board and prudential standards. If the Council makes a Final Determination, it will provide the company with a written notice of the Council's Final Determination, including an explanation of the basis for the Council's decision.[48] The Council will also provide the company's primary financial regulatory agency or home country supervisor with the nonpublic written explanation of the basis of the Council's Final Determination (subject to appropriate protections for confidential information). The Council expects that its explanation of the basis for any Final Determination will highlight the key risks that led to the determination and include guidance regarding the factors that were important in the Council's determination. When practicable and consistent with the purposes of the determination process, the Council will provide a nonbank financial company with notice of a Final Determination at least one business day before publicly announcing the determination pursuant to § 1310.21, paragraphs (d)(3), (e)(3), or (d)(3) of the Council's rule.[49] In accordance with the Dodd-Frank Act, a nonbank financial company that is subject to a Final Determination may bring an action in U.S. district court for an order requiring that the determination be rescinded.[50]

The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation prior to a Final Determination with respect to such company. However, if a company that is under review in Stage 1 or Stage 2 publicly announces the status of its review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. In addition, the Council will publicly release the explanation of the Council's basis for any Final Determination or rescission of a determination, following such an action by the Council. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.[51] In light of these confidentiality obligations, such confidential information will be redacted from the materials that the Council makes publicly available, although the Council does not expect to restrict a company's ability to disclose such information.

III. Annual Reevaluations of Nonbank Financial Company Determinations

After the Council makes a Final Determination regarding a nonbank financial company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its Final Determination. Except in cases where new material risks arise over time, if the potential risks identified in writing by the Council at the time of the Final Determination and in subsequent reevaluations have been adequately addressed, generally the Council would expect to rescind its determination regarding the company.

For any nonbank financial company that is subject to a Final Determination, the Council is required to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination. The Council may also consider a request from a company for a reevaluation before the next required annual reevaluation, in the case of an extraordinary change that materially affects the Council's analysis.[52]

The Council will apply the same standards of review in its annual reevaluations as the standards for an initial determination regarding a nonbank financial company: either material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or the mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company does not meet either of those standards, the Council will rescind its determination.

The Council's annual reevaluations will generally assess whether any material changes since the previous reevaluation and since the Final Determination justify a rescission of the determination. The Council expects that its reevaluation process will focus on whether any material changes that have taken effect—including changes at the company, changes in its markets or its regulation, changes in the impact of relevant factors, or otherwise—result in the company no longer meeting the standards for a determination. In light of the frequent reevaluations, the Council's analyses will generally focus on material changes since the Council's previous review, but the ultimate question the Council will seek to assess is whether changes in the aggregate since the Council's Final Determination regarding the company have caused the company to cease meeting either of the statutory standards for a determination.

During the Council's annual reevaluation of a determination regarding a nonbank financial company, the Council will provide the company with an opportunity to meet with representatives of the Council to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability. In addition, during an annual reevaluation, the company may submit any written information to the Council the company considers relevant to the Council's analysis. During annual reevaluations, a company is encouraged to submit information regarding any changes related to the company's risk profile that mitigate the potential risks previously identified by the Council. Such changes could include updates regarding company restructurings, regulatory developments, market changes, or other factors. If the company or its regulators have taken steps to address the potential risks previously identified by the Council, the Council will assess whether the risks have been adequately mitigated to merit a rescission of the determination regarding the company. If the company explains in detail and in a timely manner potential changes it could make to its business to address the potential risks previously identified by the Council, representatives of the Council will endeavor to provide their feedback on the extent to which those changes may address the potential risks.

If a company contests the Council's determination during the Council's annual reevaluation, the Council will vote on

[44] 12 CFR 1310.10(b).

[45] Dodd-Frank Act section 113(e)(1), 12 U.S.C. 5323(e)(1).

[46] See 12 CFR 1310.21(c).

[47] Financial Stability Oversight Council Hearing Procedures for Proceedings Under Title I or Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, available at *https://fsoc.gov.*

[48] Dodd-Frank Act section 113(e)(3), 12 U.S.C. 5323(e)(3); see also 12 CFR 1310.21(d)(2) and (e)(2).

[49] See 12 CFR 1310.21(d)(3) and (e)(3) and 1310.22(d)(3).

[50] See Dodd-Frank Act section 113(h), 12 U.S.C. 5323(h).

[51] See Dodd-Frank Act section 112(d)(5), 12 U.S.C. 5322(d)(5); see also 12 CFR 1310.20(e).

[52] See note 3 above.

whether to rescind the determination and provide the company, its primary financial regulatory agency or home country supervisor, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. If the Council does not rescind the determination, the written notice provided to the company will address the most material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation. The written notice from the Council will also explain why the Council did not find that the company no longer met the standard for a determination under section 113 of the Dodd-Frank Act. In general, due to the sensitive, company-specific nature of its analyses in annual reevaluations, the Council generally would not publicly release the written findings that it provides to the company, although the Council does not expect to restrict a company's ability to disclose such information.

Finally, the Council will provide each nonbank financial company subject to a Council determination an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

Kayla Arslanian,

Executive Secretary.

[FR Doc. 2023–08964 Filed 4–27–23; 8:45 am]

BILLING CODE 4810–AK–P–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 25

[Docket No. FWS–HQ–NWRS–2022–0092; FXRS12610900000–212–FF09R20000]

RIN 1018–BG80

National Wildlife Refuge System; Drain Tile Setbacks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose new regulations pertaining to wetland easements to bring consistency, transparency, and clarity for both easement landowners and the Service in the administration of conservation easements, pursuant to the National Wildlife Refuge Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997. The proposed regulations would codify the process by which the Service establishes drain tile setbacks in wetland easement contracts. Setback distances would be calculated based upon the best available science considering soil characteristics, tile diameter, the depth of the tile below the surface, and/or topography sufficient to the easement contract's standard of protection that ensures no drainage of adjacent protected wetland areas. The proposed regulations would apply only to setbacks provided by the Service beginning on the effective date of the final rule.

DATES:

Written comments: We will accept comments received or postmarked on or before June 27, 2023.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by June 27, 2023.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, type in FWS–HQ–NWRS–2022–0092, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on "Comment."
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–HQ–NWRS–2022–0092; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information).

Information collection requirements: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference "OMB Control Number 1018–New Drain Tile Setbacks" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Debbie DeVore, (251) 604–1383. 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

Wetland habitat in the Prairie Pothole Region (PPR) of Iowa, Minnesota, Montana, North Dakota, and South Dakota is critically important to waterfowl and other migratory bird populations. The unique topography of the PPR includes the numerous small wetlands and potholes typical of the PPR that were formed through glaciation thousands of years ago. Prairie potholes are freshwater depressions and marshes, often less than 2 feet deep and 1 acre in size, that are a permanent feature of these landscapes barring deliberate alteration of the topography or hydrology. What makes the PPR so biologically important to waterfowl is the seasonal fluctuation of surface water through these permanent wetlands basins. The PPR is responsible for producing approximately 50 to 75 percent of the primary species of ducks on the North American continent, providing habitat for more than 60 percent of the breeding population. Waterfowl fledged in the PPR are a significant natural resource that supports waterfowl hunting and an associated industry that creates an estimated 30,000 jobs and nearly $1 billion in economic benefit.

Congress, recognizing the impact that widespread drainage was having on wetlands and waterfowl populations in the PPR, officially created the Small Wetlands Acquisition Program on August 1, 1958, by amending the 1934 Migratory Bird Hunting Stamp Act (commonly referred to as the "Duck Stamp Act"). The amendment allowed proceeds from the sale of Federal Duck Stamps to be used to conserve and protect "small wetland and pothole areas" through the acquisition and establishment of areas designated as Waterfowl Production Areas (WPAs). The Service purchased the first fee-title WPA in South Dakota in 1959 and began to purchase wetland easements

soon thereafter. The acquisition of wetland easements accelerated across the PPR following the passage of the 1961 Wetlands Loan Act (Pub. L. 87–383), which authorized appropriations to advance funding for the purchase of wetland easements. Wetland easements are part of the National Wildlife Refuge System, governed by the National Wildlife Refuge System Administration Act (hereafter, ''the Administration Act''; 16 U.S.C. 668dd, *et seq.*).

Wetland Easements

This proposed rulemaking action would create new regulations pertaining to easement lands protected by a Service easement for waterfowl management rights (commonly referred to as a ''wetland easement'') in the PPR. The easements are areas of land or water acquired and administered by the Service with a less than fee interest for the purpose of maintaining small wetland or pothole areas suitable for use as WPAs.

A wetland easement is a voluntary legal agreement with the Service that pays landowners to permanently protect wetlands. The easement contains restrictions on the use or development of the land to protect its conservation values. The Service's wetland easements are minimally restrictive conservation easements, meaning that they have a minimal impact on the property value and limit the landowner's use and enjoyment of the property to a minor degree. Landowners who sell a wetland easement to the Service agree that wetlands protected by an easement cannot be drained, filled, leveled, or burned. If these wetlands dry up naturally, they can be farmed, grazed, or hayed.

Drain Tiles

Traditionally, the purpose of subsurface agricultural drainage has been to lower the water table of poorly drained soils with the goal of improving soil aeration. Recently, advanced drainage systems have been promoted as a way to manipulate soil water content during the growing season. Subsurface drainage systems typically remove water through perforated pipe (commonly referred to as drain tile) placed below the soil surface.

Drain tile positioned adjacent to wetland areas can result in reduced hydroperiods (periods of inundation) depending on several factors, such as the depth of tile in relation to the wetland area. The amount and timing of precipitation intercepted by subsurface drainage systems will vary depending on soil properties, topography (low/high topographic relief), placement of tile relative to the wetland area (horizontal distance, elevation), and the relation between the wetland area and groundwater (*i.e.,* recharge, discharge). Direct drainage of a wetland area by placing perforated tile and surface inlet pipes through (beneath) the wetland area would have a detrimental effect on wetland hydrology regardless of other factors.

Drainage systems positioned adjacent to a wetland area in low-relief terrain have the potential to indirectly affect the wetland area through lateral drainage (lateral effect). The lateral effect is defined as the perpendicular distance on either side of a tile pipe where soil water can be drained by the tile. Drainage systems positioned to encircle a wetland area completely or partially in high-relief terrain can intercept groundwater and precipitation runoff to the wetland area depending on the previously mentioned factors.

This Proposed Rule

The proposed regulations in this document clarify that drain tile may be installed on lands encumbered by a wetland easement provided that protected wetland areas are not drained, directly or indirectly. This proposed rule distinguishes Service wetland easements from the ''Swampbuster'' provisions of the Food Security Act of 1985 (also known as the ''Farm Bill''; Pub. L. 99–198), which allow drain tile to have a ''minimal effect'' to wetlands. Service wetland easement agreements with landowners include provisions that allow for no effect; hence, the proposed regulations would clarify that tile may be installed on a wetland easement tract provided that the tile does not drain a protected wetland area.

Because the impact of a given drainage system on wetland areas varies greatly depending on site conditions, the Service will provide individual drain tile setback distances to landowners. The proposed regulations would require the Service to establish drain tile setback distances based upon the best available science, considering soil characteristics, tile diameter, the depth of the tile below the surface, and/or topography that ensure protected wetland areas are not drained. Furthermore, the Service will provide these setback distances to landowners upon request.

Additionally, we propose that landowners who adhere to the setback distances prescribed by the Service, including the tile diameters and tile depths below the surface that were used to calculate the Service-provided drain tile setback distances, will not be required to remove drain tile that is later found to have an adverse effect on protected wetland areas. These proposed regulations recognize that our understanding of the effects that drain tile may have on wetland hydrology is an evolving science. Service-provided drain tile setback distances may prove inadequate to fully protect easement wetland areas from drainage. However, landowners who coordinate their tiling plans with the Service and adhere to the Service-determined setback distances would not later be held criminally responsible or civilly liable for disturbing, injuring, or destroying a unit of the National Wildlife Refuge System (*i.e.,* draining a protected wetland area) provided the subsurface drainage system is not modified, enhanced, or replaced.

Proposed Amendments to Existing Regulations

This document proposes to codify in the Code of Federal Regulations the following provisions:

(1) Within a Service-provided timeframe, the Service will provide setback distances for the placement of drain tile on lands covered by wetland easements in Iowa, Minnesota, Montana, North Dakota, and South Dakota;

(2) the Service will provide guidance to landowners about what materials should be submitted as part of a request; and

(3) when a landowner coordinates tile planning with the Service in accordance with this guidance and adheres to the Service-provided drain tile setback distances, including the tile diameters and tile depths below the surface that were used to calculate the Service-provided drain tile setback distances, the Service will not seek legal redress if it is later determined that the Service-provided drain tile setback distances failed to protect the wetland areas from drainage, provided that the drain tile has not been modified, enhanced, or replaced.

The regulations would apply only to setbacks provided by the Service beginning on the effective date of the final rule.

Statutory Authority

The Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997 (hereafter, ''the Improvement Act''; Pub. L. 105–57), governs the administration and public use of refuges.

Amendments enacted by the Improvement Act were built upon the Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist

for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on the conservation of fish, wildlife, and plant resources and their habitats. The Act contains 14 directives to the Secretary, one of which states that, in administering the Refuge System, the Secretary shall ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges. The Administration Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Request for Comments

You may submit comments and materials on this proposed rule by any one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment on *https://www.regulations.gov.* Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Required Determinations

Clarity of This Proposed Rule

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

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

(c) Use 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 **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking is not significant.

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

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities. However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b).

Within the Prairie Pothole Region (comprising Iowa, Minnesota, North Dakota, South Dakota, and Montana), there are approximately 28,000 wetland easements, of which the majority are located on privately owned farmland. Thus, small businesses within the crop production industry (North American Industry Classification System 111) may be impacted by the proposed rule. One aspect of the proposed rule codifies the Service's existing drain tile setback practices; therefore, the effect of this regulatory provision on small businesses would be negligible. The proposed rule also provides legal certainty for landowners who adhere to the setback distances prescribed by the Service. The information collection form to request the setback distances is estimated to take 15 minutes, which would be negligible for small businesses. Currently, approximately 20 landowners annually (less than 0.01 percent) must remove drain tile systems because they do not adhere to the contract that granted the easement. As a result of the added benefit of legal certainty, the proposed rule may provide the incentive to these landowners to adhere to the contract and, thus, reduce the costs of removing drain tile systems. The average annual number of small businesses (20) potentially impacted by this rulemaking is not substantial.

Therefore, we certify that this rule, as proposed, would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. We anticipate no significant employment or small business effects. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across five States and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Would 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.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector

of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required. The proposed rule does not have any takings implications because it would not impact protected property rights. The proposed rule provides clarity and standardization of the Service's existing process for providing drain tile setback distances to landowners and provides landowners with legal protection when they choose to follow the Service's setback distances. The proposed rule would not require landowners to consult the Service regarding setback distances, nor would it require landowners to follow the Service's setback distances if they are provided.

Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Energy Supply, Distribution or Use (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A statement of energy effects is not required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes.

Paperwork Reduction Act (PRA)

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The new reporting and/or recordkeeping requirement associated with requests for drain tile setbacks described below requires approval by OMB:

Requests for Drain Tile Setbacks (FWS Form 3–2554)

Upon the request of a landowner (via submission of FWS Form 3–2554), the Service will provide setback distances for the placement of drain tile on lands covered by wetland easements. The setback distances will be based on best available science and must be adequate to ensure protected wetland areas are not drained. Information collected via FWS Form 3–2554 includes basic contact information for the landowner, along with the easement number(s) for the specific land covered by the wetland easement.

The Service will provide guidance to landowners about what materials should be submitted as part of a request and will provide setback distances to landowners within a Service-provided timeframe. When a landowner coordinates their tile planning with the Service in accordance with this guidance and adheres to the Service-provided drain tile setback distances, the Service will not seek legal redress if it is later determined that Service-provided drain tile setback distance failed to protect the wetland areas from drainage, provided that drain tile has not been modified, enhanced, or replaced.

Title of Collection: Requests for Drain Tile Setback (50 CFR part 25).

OMB Control Number: 1018–NEW.

Form Number: FWS Form 3–2554.

Type of Review: New.

Respondents/Affected Public: Individuals/households, businesses, and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: 5 minutes for reporting and 10 minutes for recordkeeping requirements.

Total Estimated Number of Annual Burden Hours: 39.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(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) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to OMB, with a copy to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference ''OMB Control Number 1018–New Drain Tile Setbacks'' in the subject line of your comments.

National Environmental Policy Act

We are required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We have determined that the proposed rule falls under the class of actions covered by the following Department of the Interior categorical exclusion: ''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.'' (43 CFR 46.210(i)). The proposed regulations would codify existing Service practice in administering

minimally restrictive wetland easements.

Primary Author

Debbie DeVore, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as set forth below:

PART 25—ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.;* and Pub. L. 102–402, 106 Stat. 1961.

Subpart B—Administrative Provisions

■ 2. Revise § 25.23 to read as follows:

§ 25.23 Information collection requirements.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in part 25 and assigned OMB Control Numbers 1018–0102, 1018–0140, 1018–0181, or 1018–#### (unless otherwise indicated). Federal agencies 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. Direct comments regarding the burden estimates or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

■ 3. Add § 25.24 to read as follows:

§ 25.24 Drain tile setbacks.

(a) *Applicability.* The regulations in this section apply to any easement lands protected by a U.S. Fish and Wildlife Service easement for waterfowl management rights (commonly referred to as a wetland easement) that were acquired through the Small Wetlands Acquisition Program in the Prairie Pothole Region of Iowa, Minnesota, Montana, North Dakota, and South Dakota. The regulations in this section apply only to setbacks provided by the Service beginning on [EFFECTIVE DATE OF THE FINAL RULE].

(b) *Drainage tile setbacks.* Upon the request of a landowner, the Service will provide setback distances for the placement of drain tile on lands covered by wetland easements. The setback distances will be based on the best available science and must be adequate to ensure that protected wetland areas are not drained. Contact your local U.S. Fish and Wildlife Service station to obtain further information. You can obtain contact information for your local Service station by contacting one of the Service regional offices; addresses for these offices are at 50 CFR 2.2.

(c) *Protection from legal redress.* The Service will provide guidance to landowners about what materials should be submitted as part of a request and will provide setback distances to landowners within a Service-provided timeframe. When a landowner coordinates tile planning with the Service in accordance with the regulations in this section and adheres to the Service-provided drain tile setback distances, including the tile diameters and tile depths below the surface that were used to calculate the Service-provided drain tile setback distances, the Service will not seek legal redress if it is later determined that the drain tile setback distances provided by the Service failed to protect the wetland areas from drainage, provided that the drain tile has not been modified, enhanced, or replaced.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2023–08998 Filed 4–27–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 88, No. 82

Friday, April 28, 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

Food Safety and Inspection Service

[Docket No. FSIS–2022–0013]

Salmonella in Not-Ready-To-Eat Breaded Stuffed Chicken Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed determination and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to declare that not-ready-to-eat (NRTE) breaded stuffed chicken products that contain *Salmonella* at levels of 1 colony forming unit (CFU) per gram or higher are adulterated within the meaning of the Poultry Products Inspection Act (PPIA). Although the labeling of these products has undergone significant changes over time to better inform consumers that they are raw and to provide instructions on how to prepare them safely, NRTE breaded stuffed chicken products continue to be associated with *Salmonella* illness outbreaks. Therefore, FSIS has concluded that public health measures that focus primarily on product labeling and consumer handling practices have not been effective in preventing additional foodborne illnesses associated with NRTE breaded stuffed chicken products. FSIS is also proposing to carry out verification procedures, including sampling and testing of the chicken component of these products prior to stuffing and breading, to ensure producing establishments control *Salmonella* in these products.

DATES: Comments on this proposed determination and the proposed verification procedures must be received on or before June 27, 2023. FSIS specifically requests comments on alternative bases for determining adulteration of breaded stuffed NRTE products.

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

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

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2022–0013. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202) 937–4272.

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I. Background

Pathogens as Adulterants in Raw and Not-Ready-To Eat Meat and Poultry Products

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA)(21 U.S.C 453 *et seq.*), a meat or poultry product is adulterated if, among other circumstances, ''it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated . . . if the quantity of such substance in or on such article does not ordinarily render it injurious to health'' (21 U.S.C. 601(m)(1); 21 U.S.C. 453(g)(1)). Meat and poultry products are also adulterated if they are ''unsound, unhealthful, unwholesome, or otherwise unfit for human food'' (21 U.S.C. 601(m)(3)); 21 U.S.C. 453(g)(3)).

Historically, most foodborne pathogens, including *Salmonella,* have not been considered as adulterants of raw and other NRTE meat and poultry

products based on the assumption that ordinary cooking is generally sufficient to destroy the pathogens.[1] [2] The exceptions are *Escherichia coli* O157:H7 (*E. coli* O157:H:7) [3] and certain non-O157 Shiga toxin-producing *Escherichia coli* (STEC) in raw, non-intact beef products and intact cuts that are to be further processed into non-intact products before being distributed for consumption. As discussed below, these pathogens are considered adulterants in these specific raw products because they render ''injurious to health'' what many consumers believe to be properly cooked non-intact beef products.[4]

STEC as Adulterants

When FSIS determined that certain STEC are adulterants in non-intact raw beef products, the Agency identified characteristics associated with both the pathogen and the product that distinguish them from other raw products contaminated with other pathogens. Specifically, in 1994, when FSIS initially notified the public that raw ground beef products contaminated with *E. coli* O157:H7 are adulterated within the meaning of the FMIA, the Agency noted that exposure to *E. coli* O157:H7 organisms had been linked with serious, life-threatening human illnesses, such as hemorrhagic colitis and hemolytic uremic syndrome (HUS).[5] In addition, FSIS noted that only small numbers of *E. coli* O157:H7 organisms may cause illness. Because of its low infectious dose, FSIS also noted that *E. coli* O157:H7 can be spread from person-to-person, as had been reported in child day-care settings. The Agency concluded that raw ground beef products present a significant public health risk because they are frequently consumed after preparation, (*e.g.,* cooking hamburger to a rare or medium rare state) that does not destroy *E. coli* O157:H7 organisms that have been introduced below the product's surface by chopping or grinding.

In 1999, FSIS published a **Federal Register** notice to update its policy concerning raw beef products contaminated with *E. coli* O157:H7 (*64 FR 2803,* Jan. 19, 1999). In the notice, FSIS stated that the public health risk presented by beef products contaminated with *E. coli* O157:H7 is not limited to raw ground beef products. In the notice, FSIS announced that ''given the low infectious dose of *E. coli* O157:H7 associated with foodborne disease outbreaks and the very severe consequences of an *E. coli* O157:H7 infection, the Agency believes that the status under the FMIA of beef products contaminated with *E. coli* O157:H7 must depend on whether there is adequate assurance that subsequent handling of the product will result in food that is not contaminated when consumed'' (64 FR 2803). The Agency also explained that ''in evaluating beef products contaminated with *E. coli* O157:H7, intact cuts of muscle that are to be distributed for consumption as intact cuts should be distinguished from non-intact products as well as from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption'' (64 FR 2803, 2804). Intact beef cuts of muscle include steaks, roasts, and other intact cuts in which the meat interior remains protected from pathogens migrating below the exterior surface and are not considered adulterated if the outer surface is contaminated with STEC. FSIS stated that, with the exception of intact cuts of muscle that are to be distributed for consumption as intact cuts, an *E. coli* O157:H7-contaminated beef product must not be distributed until it has been processed into a RTE product. FSIS, therefore, deemed *E. coli* O157:H7 as an adulterant of non-intact raw beef products and intact cuts that are to be further processed into non-intact raw products before being distributed for consumption.

In September 2011, FSIS determined that six additional STEC serogroups (O26, O45, O103, O111, O121, and O145) are also adulterants of raw non-intact beef products and product components used to manufacture these products (*76 FR 58157,* Sept. 20, 2011). In announcing this determination, the Agency explained that while over 50 STEC serogroups have been associated with human illness, U.S. Centers for Disease Control and Prevention (CDC) data shows that over 70 to 83 percent of confirmed, serogrouped, non-O157 STEC illnesses are caused by these six STEC serogroups (76 FR 58157, 58158). Available data at that time, including information from outbreaks and human illnesses, showed that, like *E. coli* O157:H7, these six STEC were associated with serious illnesses and that they have a relatively low infectious dose. There is also evidence that these strains have very similar characteristics to *E. coli* O157:H7 strains in that they too can survive ordinary consumer cooking practices for raw, non-intact beef products. Thus, FSIS determined that raw, non-intact beef products and intact cuts to be further processed into non-intact products that are contaminated with *E. coli* O157:H7 and pathogenic STEC O26, O45, O103, O111, O121, and O145 are adulterated under the FMIA because they contain a poisonous or deleterious substance that may render them injurious to health (21 U.S.C. 601(m)(1)) (76 FR 31975). The Agency also determined that raw, non-intact beef products that are contaminated with these pathogens are unhealthful and unwholesome (21 U.S.C. 601(m)(3)) (76 FR 31975).

Petitions To Declare Certain Salmonella Serotypes as Adulterants

As noted above, FSIS historically has not considered raw meat and poultry products to be adulterated when they contain *Salmonella,* based on the assumption that ordinary methods of cooking and preparing these products kill *Salmonella.* In response to petitions submitted by the Center for Science in the Public Interest (CSPI) in 2011 and 2014, FSIS evaluated whether certain antibiotic-resistant (ABR) *Salmonella* serotypes could be considered as adulterants in raw meat and raw poultry products under the FMIA and PPIA. The 2011 petition asked FSIS to declare four strains of ABR *Salmonella* as adulterants when found in ground meats and poultry.[6] FSIS denied the

[1] See proposed rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' February 4, 1993 (60 FR 6774 at 6798–6799) and final rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems,'' July 25, 1996 (61 FR 38806 at 38835.) See also *Amer. Public Health Ass'n* v. *Butz,* 511 F.2d 331 (U.S. App. DC, 1974).

[2] When raw meat or poultry products are associated with an illness outbreak and contain pathogens that are not considered adulterants in those products, FSIS considers the product linked to the illness outbreak to be adulterated under 21 U.S.C. 601(m)(3) or 453(g)(3) because the product is ''. . . unsound, unhealthful, unwholesome, or otherwise unfit for human food'' (77 FR 72681, 72689 (Dec. 6, 2012). Products that contain an adulterant are considered adulterated under 21 U.S.C. 601(m)(1) or 453(g)(1) even if they are not linked to an illness outbreak.

[3] On April 16, 2021, FSIS announced that it was aligning the testing criteria for *E. coli* O157:H7 with that for non-O157 STEC. Under the updated method, consistent with laboratory testing for non-O157 STEC, an *E. coli* O157:H7 isolate is confirmed positive if it has a *stx* gene, an *eae* gene, and is identified by the laboratory as O157. FSIS no longer performs H7 gene testing. FSIS began using the updated method on samples received on or after May 17, 2021. (see FSIS Announces Updates to Laboratory Testing Criteria for Escherichia coli (E. coli) O157:H7, FSIS Constituent Update (April 16, 2021). Available at: *https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-april-16-2021*).

[4] See *Texas Food Industry Association* v. *Espy,* 870 F. Supp. 143 (1994).

[5] Michael R. Taylor, FSIS Administrator. September 29, 1994. ''Change and Opportunity to Improve the Safety of the Food Supply.'' Speech to American Meat Institute Annual Convention, San Francisco, CA.

[6] CSPI petition #11–06 (May 25, 2011), ''Petition for an Interpretive Rule Declaring Specific Strains of Antibiotic Resistant *Salmonella* to be Adulterants Withing the Meaning or 21 U.S.C. 601(m)(1) and

2011 petition without prejudice on July 31, 2014. In its response, FSIS explained that the data available at that time ''did not support giving the four strains of ABR *Salmonella* identified in the petition a different status as an adulterant in raw ground beef and raw ground poultry than *Salmonella* strains that are susceptible to antibiotics.'' [7] The response stated that additional data on the characteristics of ABR *Salmonella* are needed to determine whether certain strains could qualify as adulterants under the FMIA and PPIA. The response also noted that because the Agency's denial was without prejudice, the petitioner was not precluded from submitting a revised petition that includes additional information to support the requested action.

The CSPI 2014 petition was a refiling of the 2011 petition and asked that FSIS declare certain strains of ABR *Salmonella* as adulterants in all meat and poultry products based on evidence attained since 2011 that, according to the petition, demonstrates both ground and intact poultry products are associated with outbreaks from ABR *Salmonella*.[8] Based on the data available at the time, FSIS denied the 2014 petition without prejudice on February 7, 2018. In its response to the petition, the Agency concluded that, with respect to its status as an adulterant, ''*Salmonella* does not appear to present the same issues as STEC, regardless of whether it is resistant or susceptible to antibiotics.'' [9] The Agency noted that the consumer studies submitted in support of the petitions did not demonstrate that the study participants had expressed a specific preference or intent to prepare or consume a meat or poultry product in a manner that is not properly cooked and did not describe specific characteristics of a meat or poultry product that consumers might mistakenly associate with proper cooking, such as a rare or medium rare hamburger. Thus, based on the consumer studies and other information on *Salmonella* available at that time, FSIS determined that it ''had no basis to conclude that either ABR-*Salmonella* or non-ABR *Salmonella* would render injurious to health what consumers consider to be properly cooked meat or poultry.'' [10]

FSIS also considered whether certain *Salmonella* serotypes should be considered as adulterants in all meat and poultry products in response to a petition submitted by Marler Clark LLP on behalf of several individuals and consumer advocacy organizations in January 2020.[11] The petition asked FSIS to declare 31 *Salmonella* serotypes that have been associated with foodborne illness outbreaks to be adulterants of all meat and poultry products subject to the FMIA and the PPIA.

In its response to the petition, FSIS explained that while the Agency agrees that it needs to rethink its existing *Salmonella* strategy to reduce human illnesses associated with poultry, it does not believe that there is sufficient data available at this time to support the sweeping actions requested in the petition.[12] The response noted that, as announced in October 2021,[13] FSIS is in the process of re-evaluating its approach to controlling *Salmonella* in poultry and is considering many of the points and arguments made in the petition as part of its re-evaluation. The response also noted that while FSIS has traditionally viewed *Salmonella* as ''naturally occurring'' in food animals, the Agency is reassessing this interpretation as part of its *Salmonella* in poultry initiative and considering whether *Salmonella* should be considered an adulterant in any poultry products. The response stated that in this consideration, FSIS is relying on the factors it identified when the Agency declared certain STEC strains to be adulterants in raw non-intact beef products and intact source materials for raw ground beef.

On January 25, 2021, CSPI and other consumer advocacy organizations and individuals petitioned FSIS to establish enforceable standards targeting *Salmonella* types of greatest public health concern and all *Campylobacter* in poultry, and to require supply chain controls.[14] With respect to the request to establish enforceable performance standard, the petition asserts that FSIS should focus specifically on the types of *Salmonella* of greatest public health concern and declare the most virulent *Salmonella* strains to be adulterants in raw poultry products. The petition also requests that FSIS employ enforceable quantitative thresholds to ensure that any *Salmonella* or *Campylobacter* that is permitted on poultry products is maintained at levels low enough to be less likely to cause human illness. The petition asserts that 21 U.S.C. 453(g)(1) authorizes FSIS to deem poultry products that contain virulent *Salmonella* strains and that contain pathogens levels above a set threshold to be adulterated under the PPIA.

FSIS is currently reviewing the 2021 CSPI petition and supporting information. As noted above, FSIS is in the process of reevaluating its approach to controlling *Salmonella* in poultry. Because the actions requested in the 2021 CSPI petition are directly related to this effort, FSIS is considering the petition and supporting information as part of its reevaluation.

Assessing a Pathogen's Status as an Adulterant in a NRTE Product

As noted above, while certain STEC have been the only pathogens to date that are considered adulterants in a raw product, certain other pathogens may also exhibit characteristics that would meet the standard to be considered as adulterants in a specific raw product. Thus, if FSIS became aware of evidence to show that a specific pathogen and product pair presents a significant public health risk, the Agency would consider the factors it identified to distinguish certain STEC from other pathogens as adulterants in raw, non-intact beef products and intact cuts to be further processed into non-intact beef products to determine the pathogen's status as an adulterant. The parallel to STEC in beef is not intended to be a direct comparison between non-intact raw beef products and other raw

(2)(a) and 21 U.S.C. 453(g)(1) and (2)(a).'' FSIS final response July 31, 2014.

[7] FSIS final response to petition #11–06, p. 1.

[8] CSPI petition #14–01 (October 1, 2014), ''Request for an Interpretive Rule Declaring Certain Antibiotic-Resistant Strains of *Salmonella* to be Adulterants'' and FSIS final response (February 7, 2018) at: *https://www.fsis.usda.gov/federal-register/petitions/request-interpretive-rule-declaring-certain-antibiotic-resistant-strains*.

[9] FSIS final response to petition #14–06, p. 6. Available at: *https://www.fsis.usda.gov/federal-register/petitions/request-interpretive-rule-declaring-certain-antibiotic-resistant-strains*.

[10] FSIS final response to petition #14–06, p. 7. Available at: *https://www.fsis.usda.gov/federal-register/petitions/request-interpretive-rule-declaring-certain-antibiotic-resistant-strains*.

[11] Marler Clark LLP petition #20–01 ''Petition for an Interpretive Rule Declaring 'Outbreak' Serotypes of *Salmonella enteritica* subspecies to be Adulterants'' dated January 19, 2020. Available at: *https://www.fsis.usda.gov/policy/petitions/petition-interpretive-rule-related-certain-salmonella-serotypes*.

[12] FSIS Final Response to Petition #20–01, May 31, 2022. Available at: *https://www.fsis.usda.gov/policy/petitions/petition-interpretive-rule-related-certain-salmonella-serotypes*.

[13] United States Department of Agriculture. (October 19, 2021). USDA Launches New Effort to Reduce *Salmonella* Illness Linked to Poultry. *https://www.usda.gov/media/press-releases/2021/10/19/usda-launches-new-effort-reduce-salmonella-illnesses-linked-poultry; see also* Food Safety and Inspection Service. (December 2, 2021). Pilot Projects: *Salmonella* Control Strategies. *https://www.fsis.usda.gov/inspection/inspection-programs/inspection-poultry-products/reducing-salmonella-poultry/pilot*.

[14] CSPI petition #21–01, ''Petition to Establish Enforceable Standards Targeting *Salmonella* Types of Greatest Public Health Concern while Reducing all *Salmonella* and *Campylobacter* in Poultry, and to Require Supply Chain Controls'' (January 25, 2021) at: *https://www.fsis.usda.gov/policy/petitions/petition-submitted-center-science-public-interest*.

products or about the specific preparation methods between non-intact raw beef and other raw products. The intent is to identify the criteria that were used to determine that certain STECs are adulterants in non-intact beef and apply these criteria to assess whether there are other pathogens that should be considered as adulterants when present in a specific raw product. Specifically, the Agency would consider whether certain pathogen serogroups or types have been associated with human illnesses; whether the pathogen has a relatively low infectious dose; whether the pathogen can cause serious human illnesses; and whether traditional or ordinary cooking practices associated with the specific raw products are sufficient to destroy the pathogen.

II. NRTE Breaded Stuffed Chicken Products

NRTE breaded stuffed chicken products contain raw, comminuted chicken breast meat, trim, or whole chicken breast meat, but the finished product is heat-treated only to set the batter or breading on the exterior of the product, which may impart an RTE appearance.[15] The product typically is stuffed with ingredients, such as a raw vegetable, butter, cheese or meat such as ham, and is typically cooked by household consumers from a frozen state. NRTE breaded stuffed chicken products do not include other types of stuffed products that are not breaded, such as turducken or whole stuffed chickens. NRTE breaded products that are not also stuffed, such as chicken nuggets and other par-fried products are not included in this product type. Only NRTE products that are both breaded and stuffed are the subject of this policy.

NRTE breaded stuffed chicken products contain raw poultry and thus may contain pathogens, such as *Salmonella.* However, because the product may appear fully cooked, some consumers may only reheat the product for aesthetic or palatability purposes rather than subject it to cooking sufficient to kill pathogenic bacteria. NRTE breaded stuffed chicken products are also typically cooked from a frozen state, which increases the risk that they will not reach an internal temperature needed to destroy *Salmonella* organisms that may be in the product. While NRTE chicken nuggets and other par-fried breaded products that are not stuffed may also have a cooked appearance, the focus of this document is on NRTE breaded stuffed chicken products because these stuffed products are thicker in diameter and have a different composition than other par-fried breaded products, which can make effective cooking of NRTE breaded stuffed chicken products more challenging. In addition, it may be difficult for a consumer to determine an accurate internal temperature of these products because they contain multiple ingredients that may cook at different rates. FSIS has recommended in the past that consumers check the temperature at multiple locations throughout the product, but this is not always practical or accurate.[16] In addition, NRTE breaded stuffed chicken products have been associated with a number of *Salmonella* illness outbreaks in the United States.

Before 2006, many NRTE breaded stuffed chicken products were marketed as a microwaveable product, and the labeling on the product packaging included instructions for cooking the products in both a microwave and conventional oven. However, as discussed below, information from documented *Salmonella* illness outbreaks associated with NRTE breaded stuffed chicken products from 1998 through 2006 showed that, based on the product's labeling, appearance, and frozen state, most case patients that became ill after consuming these products thought that the product was pre-cooked, and therefore, did not cook it to an internal temperature necessary to destroy pathogens. In response, industry producers have made numerous changes to the labeling of NRTE breaded stuffed chicken products over time to inform consumers that these products are raw and to provide instructions on how to prepare them safely. In addition, industry no longer markets NRTE breaded stuffed chicken products as microwavable products because cooking these products in a microwave oven decreases the chances that they will reach an internal temperature needed to destroy *Salmonella.* From 1998 to 2021, FSIS and public health partners have investigated 14 *Salmonella* illness outbreaks associated with consumption of NRTE breaded stuffed chicken products, which are summarized below and listed in Table 1. An FSIS analysis of all chicken associated outbreaks the Agency identified in the CDC National Outbreak Reporting System (NORS)[17] or in the scientific literature from 1998–2020 found that although NRTE breaded stuffed chicken products account for less than 0.15 percent of the total domestic chicken supply (in 2021, 53.9 million pounds of NRTE breaded stuffed chicken were produced compared to 45.4 billion pounds of raw chicken products overall), outbreaks linked to these products represented approximately five percent of all chicken-associated outbreaks in the United States during this time. (See Appendix A for the list of *Salmonella* outbreak investigations associated with all chicken products from 1998–2020).

Salmonella Illness Outbreak Investigations Associated With NRTE Breaded Stuffed Chicken Products 1998–2016 and FSIS and Industry Response

1998–2006 outbreak investigations. From 1998 through 2006, four separate outbreaks of salmonellosis associated with consumption of NRTE breaded stuffed chicken products were identified in Minnesota.[18] In the first outbreak in 1998, 33 *Salmonella* Typhimurium cases were associated with a single brand of raw, frozen, stuffed, breaded, pre-browned, and microwaveable Chicken Kiev product.[19] Of the 33 people who became ill, 3 were hospitalized for a range of 2–3 days. The outbreak duration was 5 months. Most case patients reported that they thought the product was pre-cooked, and most prepared the product in a microwave oven. No case patients reported taking an internal temperature of the product after cooking. In response to the outbreak, the company that produced the product initiated a voluntary recall of the implicated products and made several changes to the product label, such as replacing the words ''ready to cook'' on the principal display panel with the words ''not precooked'' and adding ''not pre-cooked—cook thoroughly'' and ''cook to an internal temperature of 165 °F'' to the cooking instructions on the back of the package.

In the second outbreak in early 2005, four *Salmonella* Heidelberg human illnesses were associated with raw, frozen, stuffed, breaded, pre-browned, and microwaveable chicken products.[20]

[15] FSIS Directive 5300.1, Revision 1. Managing the Establishment Profile in the Public Health Information System (Oct 19, 2016). See attachment 2 ''NRTE Stuffed Chicken Products that appear RTE.'' Available at: *https://www.fsis.usda.gov/policy/fsis-directives/5300.1.*

[16] Smith, K.E., Medus, C., Meyer, S.D., Boxrud, J.D., Leano, F., Hedburg, C., Elfering, K., Braymen, C., Bender, J.B., Danila, R.N. 2008. Outbreaks of Salmonellosis in Minnesota (1998 through 2006) Associated with Frozen, Microwaveable, Breaded Stuffed Chicken Products. Journal of Food Protection. 71(10): 2153–2160.

[17] CDC National Outbreak Reporting System available at: *https://www.cdc.gov/nors/index.html.*

[18] Smith K, Medus C, Meyer S. et al. Outbreaks of Salmonellosis in Minnesota (1998 through 2006) Associated with frozen, microwavable, breaded, stuffed chicken products (2008). *Journal of Food Protection, 71*(10), 2153–2160.

[19] Smith, K. *et al.* (2008).

[20] Smith, K. *et al.* (2008).

One elderly case patient was hospitalized for 4 days. The duration of the outbreak was three months. A separate published report noted that additional *Salmonella* cases associated with similar products were also reported in Michigan.[21] In response to the outbreak, FSIS issued a public health alert (PHA) to remind consumers that frozen meat and poultry products must be fully cooked before they are consumed. In addition, the manufacturer modified the labels of the products to include the word ''uncooked'' and verified the cooking instructions.

In the third outbreak in August 2005 through July 2006, 27 *Salmonella* Enteritidis cases were associated with a variety of raw, frozen, stuffed, breaded, pre-browned, and microwaveable chicken products.[22] The products represented eight product brands produced by three separate companies. *Salmonella* Enteritidis was isolated from intact samples of breaded stuffed chicken products produced in an establishment owned by one of the companies. Of the 27 case patients, 6 were hospitalized. The length of hospitalization ranged from 2 to 30 days. Two elderly case patients were hospitalized for 30 days. Another case patient required surgery for a perforated colon. The duration of the outbreak was 11 months. Nineteen of the 27 case patients used a microwave oven to cook the products and none of the case patients took the internal temperature of the product after cooking it. The establishment that produced the products from which *Salmonella* Enteritidis had been isolated voluntarily recalled 75,800 pounds of frozen, breaded stuffed NRTE chicken entrees.[23] Because of the ongoing nature of this outbreak, FSIS issued a PHA in July 2006 to provide additional information to enable consumers to more readily identify the class of products implicated in the outbreak and to emphasize that they must be cooked to an internal temperature of 165 °F.[24] The PHA noted that in addition to the cases in Minnesota, there were at least 34 other human illnesses across the United States associated with the consumption of undercooked chicken entrees.

While the 2005–2006 *Salmonella* Enteritidis outbreak was being investigated, an outbreak of three *Salmonella Typhimurium* illnesses associated with breaded stuffed chicken products was identified.[25] Two of the case patients were hospitalized for 2 days each. The duration of the outbreak was two months. All three case patients microwaved the product, and none used a thermometer to check the internal temperature of the product.

2005–2006 FSIS and industry response. In March 2006, in response to the 2005–2006 *Salmonella* Enteritidis outbreak and recall, FSIS sent a letter to all establishments that produced frozen NRTE breaded stuffed chicken products to strongly recommend that the labeling of these products be modified to emphasize that the products are not cooked. FSIS also recommended that these establishments enhance and validate the cooking instructions to ensure that they address the intended use by the consumer. FSIS posted the letter to the FSIS website.[26] The letter explained that a statement on the principal display panel of the packaging, such as ''Uncooked: For Safety, Must be Cooked to an Internal Temperature of 165 degrees F as Measured by Use of a Thermometer'', would be appropriate to help consumers understand the need to safely prepare the product on their part. The letter also stated that in light of the concerns associated with the NRTE breaded stuffed chicken products subject to the recall, establishments were requested to submit their revised labeling to FSIS for evaluation of the necessary modifications and re-approval. The letter noted that if FSIS did not receive the modified labeling submissions by May 1, 2006, the labels for the subject products would be deemed to be rescinded.

In addition to the letter, in March 2006, FSIS made publicly available guidance contained in a March 2006 report of the Subcommittee on Consumer Guidelines for the Safe Cooking of Poultry Products of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) regarding consumer guidelines for the safe cooking of NRTE breaded stuffed chicken products.[27] The NACMCF recommended, among other things, that consumers should be advised to cook these products to a single minimum internal temperature of 165 °F and that microwaving raw poultry from a frozen state is not advisable unless the manufacturer's cooking instructions ensures that they achieve the recommended 165 °F end point temperature. The NACMCF also recommended that the principal display panel on the label indicate whether the product is RTE or NRTE and stated that it may be necessary to provide a warning on the label to fully cook the product if the product appears RTE to the consumer. In addition, in April 2006, FSIS issued guidance to establishments that produce NRTE breaded stuffed chicken products on the necessary modifications recommended for the labeling of these products.[28]

In November 2006, FSIS issued instructions to its inspection program personnel (IPP) on how to verify that establishments producing NRTE breaded stuffed chicken product have product labeling consistent with the April 2006 guidance.[29] Specifically, FSIS IPP were instructed to verify that the establishments had new labeling along with adequate validation to support the cooking instructions to be included on the product label.

In response to the 2005–2006 outbreaks and to FSIS guidance, companies that produced NRTE breaded stuffed chicken products modified the product labeling to emphasize that these products are raw and that they should not be microwaved. The companies also modified the product labeling to provide validated instructions for cooking the products in a conventional oven and instructions to cook the product to a minimum internal temperature of 165 °F as measured by a food thermometer. However, even with these labeling modifications, *Salmonella* illnesses associated with these products continued to be reported.

2008–2009 outbreak investigations. In 2008 and 2009, FSIS and public health partners investigated 4 separate

[21] Response to the Questions Posed by the Food Safety and Inspection Service Regarding Consumer Guidelines for the Safe Cooking of Poultry Products; APPENDIX I. REPORT ON SALMONELLOSIS LINKED TO CONSUMING PROCESSED CHICKEN PRODUCTS IN MINNESOTA AND MICHIGAN: SUMMARY OF A PRESENTATION GIVEN TO NACMCF ON 7 JULY 2005 BY MR. KEVIN ELFERING OF THE MINNESOTA DEPARTMENT OF AGRICULTURE. *Journal of Food Protection, 70*(1), 251–260.

[22] Smith, K. *et al.* (2008).

[23] FSIS Recall Release: Indiana Firm Recalls Frozen Stuffed Chicken Entrees Associated with Illnesses (March 10, 2006).

[24] FSIS Issues Public Health Alert for Frozen, Stuffed, Raw Chicken Products (July 2006).

[25] Smith, K. *et al.* (2008).

[26] Letter to industry about the safe handling labeling of uncooked, breaded, boneless poultry products (March 2006) at: *https://www.fsis.usda.gov/guidelines/2006-0007.*

[27] Response to the Questions Posed by the Food Safety and Inspection Service Regarding Consumer Guidelines for the Safe Cooking of Poultry Products. *Journal of Food Protection, 70*(1), 251–260.

[28] Labeling Policy Guidance Uncooked, Breaded, Boneless Poultry Products (April 2006) at: *https://www.fsis.usda.gov/guidelines/2017-0001.*

[29] FSIS Notice 75–06, Verification Instructions for Changes in Label Requirements for Uncooked and Raw Frozen, Breaded, Boneless Poultry Products (Nov 13, 2006). Supplemental Q's and A's to Address Products Affected by FSIS Notice 75–06 Verification Instructions for Changes in Label Requirements for Uncooked and Raw Frozen, Breaded, Boneless Poultry Products at: *https://www.fsis.usda.gov/guidelines/2006-0008.*

outbreaks associated with NRTE breaded stuffed chicken products. From February to April 2008, the Minnesota Department of Health (MDH) identified seven *Salmonella* Enteritidis illnesses associated with frozen, pre-browned breaded stuffed chicken products.[30] Five of the seven case patients reported cooking the product in the microwave, even though the cooking instructions did not include microwave preparation and recommended against that method of cooking. In response, FSIS issued a PHA in March 2008 to remind consumers of the importance of following package instructions for NRTE breaded stuffed chicken products and to emphasize that it is important to cook these products in a conventional oven.[31] The PHA identified the establishment that had produced the products associated with the illnesses, and FSIS conducted a Food Safety Assessment (FSA) [32] at the establishment.

In a separate investigation in October 2008, the MDH reported 14 *Salmonella* illness cases had been linked to raw, frozen, breaded, and pre-browned, stuffed Chicken Cordon Bleu and Chicken Kiev products.[33] MDH reported that the outbreak strain of *Salmonella* was found in four packages of breaded stuffed chicken products recovered from the homes of some of the individuals that were ill and from grocery stores. The outbreak strain was identified as *Salmonella* I 4,[5],12:i:-.[34] An investigation subsequently conducted by FSIS and other public health partners identified 47 illness cases from 17 States associated with the same outbreak strain with 8 reported hospitalizations.[35] Information from case patients identified in Wisconsin found that 9 out of 11 reported that they consumed frozen NRTE breaded stuffed Chicken Kiev or Cordon Bleu products. Four of the Wisconsin case patients reported that they cooked the product in a microwave, and 4 reported that they cooked the product in an oven.

After the investigation was initiated, FSIS issued a PHA due to concerns about illnesses that may be associated with NRTE breaded stuffed chicken products.[36] The PHA reminded consumers of the importance of following package cooking instructions for NRTE breaded stuffed chicken products and general food safety guidelines when handling raw meat or poultry products.

In an additional investigation in May 2009, FSIS received a report from the MDH that 2 *Salmonella* Enteritidis case patients from different households reported eating a NRTE breaded stuffed Chicken Cordon Bleu product that was produced by the same establishment.[37] The illness onsets were reported in February 2009 and April 2009; both less than a week after last consumption of the NRTE breaded stuffed chicken product. The case patients were unable to provide dates of purchase or production. MDH also reported this product was linked to a previous case patient with the same strain by consumption history in September 2008.

In the final 2008–2009 investigation, FSIS received a report from the MDH of two *Salmonella* Enteritidis cases with an indistinguishable genetic pattern that reported consuming NRTE breaded stuffed chicken products that were produced at the same establishment.[38] The product was produced in January 2009 but FSIS was unable to obtain further details because the packaging was partially discarded. An earlier case patient also reported consuming the same product but had no remaining product.

2013 and 2014 outbreak investigations. In 2013 and 2014, FSIS and public health partners investigated 2 separate *Salmonella* illness outbreaks associated with NRTE breaded stuffed chicken product. In August 2013, FSIS was notified of three *Salmonella* Enteritidis cases from Minnesota.[39] The illness onset dates were from April 2013 to July 2013. All three case patients reported consuming various NRTE chicken products produced by two separate establishments prior to illness onset. The Minnesota Department of Agriculture (MDA) collected and tested intact breaded stuffed chicken products from the case patients' homes. Products produced by one of the establishments tested positive for *Salmonella* Enteritidis, *Salmonella* Typhimurium, *Salmonella* Kentucky, and *Salmonella* I 4,12:i:-. A Chicken Cordon Bleu and Bacon and Cheddar product produced by the other establishment tested positive for the same *Salmonella* Enteritidis outbreak strain as the case patients. Two case patients reported cooking the product in the oven but one of them stated that they were not aware that the product was raw. Another case patient reported microwaving the product.

In response to the information obtained from the August 2013 outbreak investigation, FSIS issued an FSIS Notice in June 2014 instructing FSIS Inspection Program Personnel (IPP) to perform a Hazard Analysis Verification (HAV) Task [40] at establishments that produced NRTE breaded stuffed chicken products.[41] The Notice stated that during the 2013 outbreak investigation, FSIS discovered that there are consumers that may be unaware that NRTE breaded stuffed chicken products can be produced as raw frozen products. The Notice explained that the frozen state, labeling, and cooked appearance of these products may cause consumers to falsely believe that such products are precooked. The Notice instructed IPP to verify that establishments producing NRTE breaded stuffed chicken products have appropriately considered the microbial hazards associated with these products and have documentation to support their resulting decisions.

In a separate investigation in August 2014, six *Salmonella* Enteritidis illnesses in Minnesota were associated with NRTE breaded stuffed Chicken Kiev products.[42] The illness onsets ranged from August 17, 2014, to September 27, 2014, and one case patient was hospitalized. In October 2014, the establishment that produced the product initiated a voluntary recall of 28,980 pounds of the product.[43] The product labeling stated in several places that the product was raw and included validated cooking instructions as recommended in the FSIS guidance for labeling NRTE breaded stuffed chicken products. The FSIS recall release associated with the recall emphasized

[30] Minnesota Department of Health Annual Summary of Disease Activity: Disease Control Newsletter. *Salmonella* 2008 at: *https://www.health.state.mn.us/diseases/reportable/dcn/sum08/salmonellosis.html*.

[31] FSIS Public Health Alert, March 29, 2008.

[32] The purpose of an FSA is to conduct a risk-based, targeted review of establishment food safety systems to verify that the establishment is able to produce safe and wholesome meat or poultry products in accordance with FSIS statutory and regulatory requirements (*https://www.fsis.usda.gov/policy/fsis-directives/5100.1*).

[33] MDH News Release; *Salmonella cases linked to raw, frozen chicken entrees* (Oct 8, 2008).

[34] FSIS outbreak investigation case 2009–02.

[35] FSIS outbreak investigation case 2009–02.

[36] FSIS Issues Public Health Alert, October 3, 2008.

[37] FSIS outbreak investigation case 2009–23.

[38] FSIS outbreak investigation case 2009–43.

[39] FSIS outbreak investigation case 2013–17.

[40] An HAV task is a verification task performed by IPP focusing on establishments' hazard analyses, pre-requisite programs, and other supporting documentation.

[41] FSIS Notice 31–14, Supplemental Instructions for Performing the Hazard Analysis Verification Task in Establishments that Produce NRTE Stuffed Poultry Products (June 30, 2014).

[42] *Salmonella* cases linked to raw, frozen chicken entrees (October 23, 2014). Press release by Minnesota Department of Health/Minnesota Department of Agriculture.

[43] FSIS Recall Release (October 24, 2014): Illinois Firm Recalls Chicken Products Due To *Salmonella* Enteritidis Contamination *https://www.fsis.usda.gov/recalls-alerts/illinois-firm-recalls-chicken-products-due-possible-salmonella-enteritidis*.

the importance of following package cooking instructions on any NRTE breaded chicken product and to use a thermometer to ensure that the product reaches an internal temperature of 165 °F.

2015–2016 outbreak investigations. In 2015 and 2016, FSIS and public health partners investigated three *Salmonella* outbreaks associated with NRTE breaded stuffed chicken products. The MDH, Minnesota Department of Agriculture, CDC, and FSIS investigated two separate *Salmonella* Enteritidis outbreaks associated with NRTE breaded stuffed chicken products produced by different establishments from June 2015 through October 2015.[44 45] One of the outbreaks included five cases from Minnesota with illness onset dates from May 9, 2015, through July 22, 2015.[46] Two of the case patients were hospitalized. All case patients reported consuming various NRTE breaded stuffed chicken products the week before illness onset. All products were produced at the same establishment. In follow-up interviews, two case patients stated that they were aware that the product was raw, three stated that they cooked the product in a conventional oven as instructed on the label, one reported that they used a convection oven/microwave and used a thermometer to confirm that the product reached an internal temperature of 165 °F, and one case patient stated that they were not aware that the product was raw and cooked it in a microwave.

In response to the outbreak, the establishment voluntarily recalled approximately 1,978,608 pounds of product in July 2015.[47] In addition, in September 2015, FSIS issued a PHA to inform the public that additional NRTE breaded stuffed chicken products produced by the establishment subject to the July 2015 recall had tested positive for the same *Salmonella* Enteritidis strain associated with the outbreak.[48] In October 2015, the establishment expanded the July 2015 recall to include an additional 561,000 pounds of products implicated by *Salmonella*-positive results matching the outbreak strain to prevent additional illnesses.[49] The labeling of most of the products subject to the recall stated that the product was raw, should not be cooked in a microwave oven, and provided validated cooking instructions. The label also included instructions to cook the product to a minimum internal temperature of 165 °F as measured by a food thermometer and included icons and illustration that emphasized these messages.

A separate 2015 outbreak associated with NRTE breaded stuffed chicken produced by a different establishment included 15 cases from 7 states (CT, IL, MN, NH, NY, OK, and WI) with illness onset dates from April 5, 2015, through July 27, 2015. Among 10 case patients with available information, 4 were hospitalized.[50] Information available from eight case patients indicated that seven of the eight cooked the product in a conventional oven and one used a toaster oven.[51] In response, in July 2015, the establishment that produced the implicated product voluntarily recalled approximately 58,320 pounds of various NRTE breaded stuffed chicken products, which was expanded to include additional product for a total of over 1,700,000 pounds of product.[52] The labeling of most of the products subject to the recall clearly stated that the product was raw, should not be cooked in a microwave oven, and provided validated cooking instructions. The label also included instructions to cook the product to a minimum internal temperature of 165 °F as measured by a food thermometer and included icons and illustration that emphasized these messages.

In 2016, 5 *Salmonella* Enteritidis cases associated with NRTE breaded stuffed chicken were reported in Minnesota.[53] Three of the 5 case patients reported eating NRTE breaded stuffed chicken products purchased at the same retail store, and 2 of those 3 purchased a product brand that was produced by the same establishment. An FSIS investigation found that the retail store had received the same brand of NRTE breaded stuffed chicken products produced by the same establishment during the time in which case patients reported shopping at the retail store.

2015–2016 FSIS and industry response. In response to the 2015 outbreaks and recalls, FSIS issued NOIEs to the two establishments that produced the products associated with the outbreaks to inform them that FSIS intended to withhold marks of inspection or issue a suspension if they did not respond to FSIS within 3 business days regarding how they have or will implement corrective actions.[54 55] FSIS also conducted intensified sampling in these establishments for *Salmonella,* including sampling of comminuted source material, final product, and production environment surface sampling. Both establishments implemented corrective actions, such as source product testing and application of new interventions during processing, that were validated and verified by FSIS. One of the establishments also implemented product labeling changes.

In February 2016, FSIS instructed FSIS IPP at establishments that produce raw and heat-treated but not fully cooked, not shelf-stable breaded stuffed chicken products to update the establishments' Public Health Information System (PHIS) profile to allow FSIS to determine which establishments produce NRTE breaded stuffed chicken products that appear RTE.[56] After IPP updated the PHIS profiles, FSIS used the information to schedule a Public Health Risk Evaluation (PHRE)[57] and, if necessary, an FSA at these establishments. FSIS also captured information concerning

[44] FSIS *Salmonella* Enteritidis Illness Outbreaks Associated with Raw, Frozen, Stuffed Chicken Products, 2015 After-Action Review Report 2015–11/2015–12 (December 6, 2016) at: *https://www.fsis.usda.gov/food-safety/foodborne-illness-and-disease/outbreaks/outbreak-investigations-response.*

[45] Minnesota Department of Health: *Salmonella* cases linked to raw, frozen, stuffed chicken products (July 2, 2015) at: *https://content.govdelivery.com/accounts/MNMDH/bulletins/10d1df0.*

[46] CDC: Outbreak of *Salmonella* Enteritidis Infections Linked to Raw, Frozen, Stuffed Chicken Entrees Produced by Aspen Foods (Final Update) at: *https://www.cdc.gov/salmonella/frozen-chicken-entrees-part2-07-15/index.html.*

[47] Aspen Foods Recalls Frozen, Raw, Stuffed and Breaded Chicken Product Due To Possible *Salmonella* Contamination (July 15, 2015) at: *https://www.fsis.usda.gov/recalls-alerts/aspen-foods-recalls-frozen-raw-stuffed-breaded-chicken-products-due-possible-0#labels.*

[48] FSIS Issues Public Health Alert for Stuffed Chicken Products Due to Possible Salmonella Contamination (September 17, 2015) at: *https://www.fsis.usda.gov/recalls-alerts/fsis-issues-public-health-alert-stuffed-chicken-products-due-possible-salmonella.*

[49] Aspen Foods Recalls Frozen, Raw, Stuffed and Breaded Chicken Product Due To Possible *Salmonella* Contamination (October 2, 2015) at: *https://www.fsis.usda.gov/recalls-alerts/aspen-foods-recalls-frozen-raw-stuffed-breaded-chicken-products-due-possible.*

[50] CDC: Multi-State Outbreak of Drug-Resistant *Salmonella* Enteritidis Infections Linked to Raw, Frozen, Stuffed Chicken Entrees Produced by Barber Foods (Final Update; October 16, 2015) *https://www.cdc.gov/salmonella/frozen-chicken-entrees-07-15/index.html.*.

[51] FSIS outbreak ID 2015–12.

[52] Barber Foods Recalls Stuffed Chicken Products Due to Possible *Salmonella* Enteritidis Contamination (July 12, 2015) at: *https://www.fsis.usda.gov/recalls-alerts/barber-foods-recalls-stuffed-chicken-products-due-possible-salmonella-enteritidis.*

[53] FSIS outbreak investigation case 2016–06.

[54] NOIE Establishment P–1358, July 10, 2015.

[55] NOIE Establishment P–276, July 10, 2015.

[56] FSIS Notice 15–16, *Profile Update In Establishments That Produce Not-Ready-To-Eat Stuffed Chicken Products That Appear Ready-To Eat* (February 18, 2016).

[57] The PHRE is an analysis of establishment performance based on ''For-cause'' and ''Routine risk-based'' criteria, *https://www.fsis.usda.gov/policy/fsis-directives/5100.4.*

these establishments' production practices and evaluated whether establishments had reassessed their Hazard Analysis and Critical Control Point (HACCP) plans in response to the recent outbreaks associated with these products (9 CFR 417.4(b)). In addition, the Agency published industry guidance with information on developing validation for labeled cooking instructions for raw and partially cooked, breaded, boneless poultry products.[58]

In 2015–2016, FSIS also held conference calls and worked directly with establishments that produced NRTE breaded stuffed chicken products to modify the product labeling to further emphasize that the product is raw and to ensure that the label included validated cooking instructions. Based on recommendations from FSIS, establishments re-validated the cooking instructions on the product label to ensure that, when prepared as instructed, a NRTE breaded stuffed chicken product would reach an internal temperature needed to destroy *Salmonella* organisms on the interior of the product. FSIS also worked with industry to ensure that the product labels emphasized that these products should not be prepared in a microwave oven.

2016 National Advisory Committee on Meat and Poultry Inspection Recommendations and National Chicken Council Petition

2016 National Advisory Committee on Meat and Poultry Inspection recommendations. In March 2016, a National Advisory Committee on Meat and Poultry Inspection (NACMPI) subcommittee was charged to consider mandatory labeling features for certain NRTE meat and poultry products that appear RTE.[59] The subcommittee met on March 29, 2016, and issued a report that provided recommendations on labeling and other measures to prevent illnesses associated with these products.[60] The report recommended, among other things, that the labels of NRTE meat and poultry products that appear RTE include statements, such as ''Raw'' and ''Uncooked'' to differentiate these products from RTE products, and that they should also include validated cooking instructions that include the method of cooking, the endpoint temperature for safety, and an instruction to use a thermometer to measure the endpoint. The report also recommended that the cooking instructions include a disclaimer to not use a microwave, if applicable. Moreover, it recommended that FSIS conduct consumer focus groups to understand the optimal messaging and design of packaging to ensure consumers properly understand that NRTE products need to be cooked for lethality. The report further stated that FSIS should consider creating a standard of identity for these products if illnesses continue after labeling changes are made.

2016 National Chicken Council petition. In May 2016, the National Chicken Council (NCC) submitted a petition requesting FSIS to adopt regulations that would define and establish labeling requirements for NRTE breaded stuffed chicken products that appear RTE.[61] The petition also requests that FSIS issue a guidance document for developing and communicating validated cooking instructions that would incorporate the NCC's *Best Practices for Cooking Instruction Validation for Frozen NRTE Stuffed Chicken Breast Products.*[62] The petition requests that FSIS establish regulations to require, among other things, that the product name for NRTE breaded stuffed chicken products include the term ''raw;'' that the principal display panel on the product packaging include statements and icons to signal that the product is raw and should not be cooked in a microwave; and that the labeling provide validated cooking instructions that include a ''do not microwave'' icon and state that the product must be cooked to a specified endpoint temperature as measured by a food thermometer. FSIS received two letters in support of the petition, one from an industry trade association and one from a consumer advocacy organization.[63] The consumer advocacy organization expressed general support for new labeling requirements for NRTE breaded stuffed chicken products but noted that determining consumer compliance with labeling instructions is hard to assess and that the chicken industry should not rely on labeling alone as a measure to prevent human illnesses associated with these products. The industry trade association believed that the labeling requirements requested in the petition would enhance food safety by reinforcing proper consumer handling of these products and encouraged FSIS to move forward with rulemaking consistent with the petition.

To support the requested action, the petition submitted the results of a 2009 online study conducted by the NCC. The study included the results of 1,000 online interviews to assess consumers' understanding of the raw nature of NRTE breaded stuffed chicken products that appear RTE based on a 2008 ''generic old copy'' of a NRTE breaded stuffed chicken label that did not include the labeling features requested in the petition and a 2009 ''generic new copy'' of a NRTE breaded stuffed chicken product label that included the labeling requirements requested in the petition. The study found that when compared to the labeling features in the 2008 generic label, the mandatory labeling features in the 2009 generic label increased the study participants' awareness of the raw state of the product and increased the number of participants who noticed the mention of a food thermometer. As additional support, the petition referenced the labeling recommendations included in the 2006 NACMCF report discussed above as well as the 2016 NACMPI report recommendations that FSIS require NRTE products that appear RTE to bear mandatory labeling statements and include validated cooking instructions.

When FSIS received the 2016 NCC petition, most manufacturers of NRTE breaded stuffed chicken products had voluntarily incorporated the labeling features recommended by the 2016 NACMPI subcommittee and requested in the 2016 NCC petition in response to the outbreaks associated with these products. However, as discussed below, consumer behavior research results from 2020 found that even when NRTE breaded stuffed chicken product labels included features recommended by the NACMPI subcommittee and requested in the 2016 NCC petition, twenty-two

[58] Information on Validation of Labeled Cooking Instructions for Products Containing Raw or Partially Cooked Poultry (February 2017) at: *https://www.fsis.usda.gov/guidelines/2017-0017.*

[59] National Advisory Committee on Meat and Poultry Inspection, Subcommittee #2 Consideration of Mandatory Labeling Features for Certain Processed Not Ready to Eat Meat and Poultry products. March 26, 2016. (*https://www.fsis.usda.gov/news-and-events/events-meetings/2016-national-advisory-committee-meat-and-poultry-inspection-nacmpi*).

[60] Subcommittee #2 Consideration of Mandatory Labeling Features for Certain Processed Not Ready to Eat Meat and Poultry Products (March 2016) (*https://www.fsis.usda.gov/sites/default/files/media_file/2021-02/NRTE-Labeling.pdf*).

[61] National Chicken Council petition #16–03, ''Petition to Establish Regulations for the Labeling and Validated Cooking Instructions for Not-Ready-to-Eat Stuffed Chicken Breast Products That Appear Ready-to-Eat'' dated May 24, 2016 available at: *https://www.fsis.usda.gov/federal-register/petitions/establish-labeling-requirements-not-ready-eat-stuffed-chicken-products.*

[62] Attachment 1, National Chicken Council petition #16–03.

[63] Letter from Safe Food Coalition dated September 30, 1996 at: *https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/16-03-Support-Ltr-093016.pdf and* Letter from American Frozen Foods Institute dated August 17, 2016 at: *https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/16-03-Support-Ltr-081716.pdf.*

percent of the study participants were still confused about the raw nature of the product.

Consumer Behavior Research

2020 Meal Preparation Experiment. In September 2020, FSIS published a final report on a consumer research study that examined consumers' use of a food thermometer to check doneness of raw stuffed chicken products prepared from a frozen state.[64] FSIS had contracted with RTI International (RTI) and its subcontractor, North Carolina State University (NCSU), to conduct five separate iterations of a meal preparation study to evaluate consumer food handling behaviors in a test kitchen. The study examining participants' meal preparation related to NRTE breaded stuffed chicken products was the third iteration of the study. It was conducted in a test kitchen facility with individuals who self-reported preparing NRTE breaded stuffed chicken products when cooking at home. The NRTE breaded stuffed chicken product used in the study was packaged to resemble a commercially available product and included the labeling features that manufacturers have voluntarily incorporated into the labeling: *i.e.,* the term ''raw'' was prominently displayed on the front and back of the product packaging; the principal display panel included statements and icons to signal that the product is raw and should not be cooked in a microwave; and the labeling provided validated cooking instructions that included a ''do not microwave'' icon as well as icons and instructions to cook the product in a conventional oven to an internal temperature of 165 °F as measured by a food thermometer.[65]

A short video, meant to simulate a real news segment on safely preparing frozen NRTE foods, was played for some of the study participants (referred to as ''the intervention group'') as they sat in the waiting room at the start of their appointment. The segment was included as part of a looped video containing six separate news segments on current news topics. The food safety news segment communicated that although frozen NRTE foods may appear RTE, they are not fully cooked, and the endpoint temperature should be checked with a food thermometer to ensure safety. The segment showed a variety of frozen NRTE foods, including NRTE breaded stuffed chicken products and bagged frozen corn being prepared in the meal preparation study as well as products not being prepared in the study. The control group was exposed to a similar news segment video loop that did not include the segment on food safety. The study had the capacity to include up to 400 participants in each iteration of the meal preparation experiment. The study randomly assigned half of the participants (n=200) to the treatment group and the remaining 200 participants to the control group. Observations were conducted from April 29, 2019, to September 5, 2019. A final report was issued on September 23, 2020.

With respect to NRTE breaded stuffed chicken products, the study found that consumers may confuse NRTE frozen foods with RTE products. Nearly a quarter of all participants preparing frozen foods were not sure if the products were raw or fully cooked despite reading the preparation instructions on the product label. Twenty-two percent of participants were unaware that the NRTE frozen chicken product they prepared was raw. They believed it was either fully cooked, partially cooked, or were unsure. Eleven percent of the participants incorrectly believed the product was fully cooked. Nearly all study participants had prior experience preparing chicken nuggets. Thus, the pre-browned breaded appearance of the NRTE breaded stuffed chicken products may have also led participants to believe that these stuffed products can be handled the same as other breaded chicken products that are RTE. Seventy-six percent of participants said they would buy NRTE breaded stuffed chicken products for their children to prepare at home.

Ninety-nine percent of all participants self-reported that they had read the manufacturer's instructions for the NRTE breaded stuffed chicken products, which instructed consumers to use a food thermometer to check that the chicken reached a safe internal temperature of 165 °F. Seventy-seven percent of participants who were not shown the video used a food thermometer to check that at least one chicken breast reached a safe internal temperature of 165 °F, and 75 percent of those participants successfully cooked the chicken breast to 165 °F. Eight-eight percent of participants who were shown the video used a food thermometer to check the temperature of at least one chicken breast. Although the rate of thermometer use was higher among the intervention group compared with the control group, the difference was not significantly different. Participants who used other methods to determine doneness relied on time, visual cues, and touch. Although most participants reported owning a food thermometer at home, 38 percent reported not using their food thermometer at home to check that NRTE breaded stuffed chicken products were properly cooked. Thus, for some participants, their behavior in the test kitchen differed from their typical practice.

The researchers also observed participants throughout the meal preparation to determine whether they adhered to recommended handwashing practices. For purposes of the study, a handwashing attempt was considered successful based on CDC's criteria—wet hands with water; rub hands with soap for at least 20 seconds; rinse hands with water; and dry hands using a clean, one-use towel. The study found that approximately 72 percent of participants attempted to wash their hands before beginning meal preparation. Among handwashing attempts, 5 percent of attempts contained all steps of correct handwashing and were considered successful according to the CDC's criteria. However, during meal preparation, handwashing was attempted only 5 percent of the time that it was required (*e.g.,* after touching the NRTE chicken product), and there were no successful attempts. The study concluded that the small number of handwashing attempts during meal preparation of NRTE breaded stuffed chicken products is likely attributable to participants preparing a raw frozen breaded chicken product rather than fresh raw poultry. Thus, the appearance of NRTE breaded stuffed chicken products and the fact that they are typically cooked from a frozen state may contribute to *Salmonella* cross contamination in the home.

2022 Study on Appliances Used to Prepare NRTE Breaded Stuffed Chicken Products. In December 2022, the CDC published a report on a study that describes the demographic characteristics of persons who prepare NRTE breaded stuffed chicken products and which appliances they use to prepare them.[66] In the study, to assess types of cooking appliances used to prepare NRTE breaded stuffed chicken products, members of an internet research panel were asked to identify

[64] Final Report: Food Safety Consumer Research Project: Meal Preparation Experiment on Raw Stuffed Chicken Breasts (September 23, 2020) at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-04/fscrp-yr3-nrte-final-report.pdf.*

[65] Figure 2–2 Packaging for NRTE Chicken Product Used in Meal Preparation Study.

[66] Marshall, K.E., Canning, M., Ablan, M., Crawford T.N., Robyn, M. Appliances Used by Consumers to Prepare Frozen Stuffed Chicken Products-United States, May–July 2022. Morb Mortal Wkly Rep Dec 2,2022; 71(48);1511–1516. Available at: *http://dx.doi.org/10.15585/mmwr.mm7148a2.*

which appliances they use to prepare these products. Respondents could choose more than one appliance. Of the 2,546 panel members that reported preparing NRTE breaded stuffed chicken products, approximately 80 percent reported using an oven as one of the cooking appliances, while 54 percent reported that they prepared these products using appliances other than or in addition to ovens. Although the labeling of NRTE breaded stuffed chicken products typically includes instructions to cook the product in an oven and warns consumers not to cook them in a microwave, approximately 30 percent of the respondents who reported preparing NRTE breaded stuffed chicken products reported using air fryers, 20 percent reported using microwaves, approximately 14 percent reported using toaster ovens, and approximately 4 percent reported using another appliance. The study found that respondents with lower incomes and who live in mobile types of homes reported lower oven use and higher microwave use.

The study noted that current measures to prevent *Salmonella* infections linked to contaminated NRTE breaded stuffed chicken products primarily rely on consumers' ability to identify that they are raw, follow and adequately cook the products according to validated cooking instructions, and to verify the product's internal temperature using a food thermometer. The researchers stated that the survey findings highlight some possible challenges consumers may face preparing NRTE breaded stuffed chicken products safely and the need for additional action. The study suggests that, given the percentage of respondents who reported using an appliance other than an oven to prepare NRTE breaded stuffed chicken products, and socioeconomic characteristics of respondents with lower oven usage, *e.g.,* oven use was lower among respondents with household income <$25,000 (68.9%), and who lived in mobile homes or other portable types of homes (66.5%), companies that produce these products could consider implementing interventions that rely less on labeling and consumer preparation practices to ensure that these products are safe when consumed. The study noted that persons who live in mobile or other portable types of homes might have less or insufficient space for a conventional oven and that appliances like microwaves are small, often portable, and cost less to own and operate than an oven. According to the study, these findings suggest that economic and other factors might influence some groups' access to recommended cooking appliances.

2021 Salmonella Illness Outbreak, NACMPI Subcommittee Recommendations, and NCC Petition Supplement

2021 Salmonella illness outbreak. From April through August 2021, state public health officials, the CDC, and FSIS investigated a multistate outbreak of *Salmonella* Enteritidis illnesses linked to NRTE breaded stuffed chicken products.[67] [68] Epidemiologic, laboratory, and traceback data showed that NRTE breaded stuffed chicken products produced by a single establishment were associated with the illnesses. The outbreak included 36 cases from 11 States with illness onset dates from February 21, 2021, to August 16, 2021. Of the 27 case patients interviewed, 14 (52 percent) reported preparing and eating NRTE frozen breaded stuffed chicken products. Of 32 case patients with information available (out of 36 total cases), 12 were hospitalized. No deaths were reported.

The labeling of the products associated with the outbreak stated: the product was raw on the front and back of the packaging; included statements and icons to signal that the product is raw and should not be cooked in a microwave oven; and provided validated cooking instructions that included a ''do not microwave'' icon as well as icons and instructions to cook the product in a conventional oven to an internal temperature of 165 °F as measured by a food thermometer. However, some of the case patients reported that they did not follow the manufacturer's cooking instructions on the label. Some case patients reported that they cooked the product in a microwave oven, air fryer, or for a shorter time than instructed for a conventional oven, and they did not use a food thermometer to check that the product reached an internal temperature of 165 °F, as instructed on the product label.

The MDA conducted retail product sampling of these products as part of the investigation and isolated the outbreak strain. Based on the strong link between epidemiologic information and product sampling results, FSIS issued a Public Health Alert (PHA) on June 2, 2021, to inform the public that some of the ill patients in the outbreak had reported eating NRTE breaded stuffed chicken prior to illness onset.[69] FSIS traced the product purchased by one ill patient to an FSIS-regulated establishment, and on August 9, 2021, the establishment voluntarily recalled approximately 59,251 pounds of the affected products.[70]

TABLE 1—SUMMARY OF SALMONELLA OUTBREAK INVESTIGATIONS ASSOCIATED WITH NRTE BREADED STUFFED CHICKEN PRODUCTS 1998–2021

Year	Serotype	Illnesses	Hospitalization	Recall/PHA
1998	Typhimurium	33	3	Recall.
2005	Heidelberg	4	1	PHA.
2005–2006	Enteritidis	27	6	Recall and PHA.
2006	Typhimurium	3	2	
2008	Enteritidis	7	2	PHA.
2008–2009	I 4,[5],12:i:–	47	8	PHA.
2009	Enteritidis	2		
2009	Enteritidis	2		
2013	Enteritidis	3		

[67] USDA, FSIS: *Salmonella* Enteritidis Outbreak Linked to Frozen, Raw, Breaded, Stuffed, Chicken Products; Outbreak Investigation After Action Review, Report 2021–07 at: *https://www.fsis.usda.gov/sites/default/files/media_file/2022-04/FSIS-After-Action-Review-2021-07.pdf.*

[68] CDC: *Salmonella* Outbreak Linked to Raw Frozen Breaded Stuffed Chicken Products (October 13, 2021) at: *https://www.cdc.gov/salmonella/enteritidis-06-21/index.html.*

[69] FSIS Issues Public Health Alert for Frozen, Raw, Breaded Stuffed Chicken Products Due to Possible *Salmonella* Contamination (June 2, 2021) at: *https://www.fsis.usda.gov/recalls-alerts/fsis-issues-public-health-alert-frozen-raw-breaded-stuffed-chicken-products-due.*

[70] Serenade Foods Recalls Frozen, Raw, Breaded, Stuffed Chicken Products Due to Possible *Salmonella* Contamination (August 9, 2021) at: *https://www.fsis.usda.gov/recalls-alerts/serenade-foods-recalls-frozen-raw-breaded-stuffed-chicken-products-due-possible.*

TABLE 1—SUMMARY OF SALMONELLA OUTBREAK INVESTIGATIONS ASSOCIATED WITH NRTE BREADED STUFFED CHICKEN PRODUCTS 1998–2021—Continued

Year	Serotype	Illnesses	Hospitalization	Recall/PHA
2014	Enteritidis	6	1	Recall and PHA.
2015	Enteritidis	5	2	Recall.
2015	Enteritidis	15	4	Recall and PHA.
2016	Enteritidis	5		
2021	Enteritidis	36	12	Recall and PHA.

Note: Outbreak investigation data from FSIS at the time the investigations were closed.

2021 NACMPI Recommendations. On August 27, 2021, FSIS announced that the NACMPI would hold a virtual meeting to consider, among other things, issues related to NRTE breaded stuffed chicken products.[71] The virtual public meeting was held on September 27 and 28, 2021, and a subcommittee was charged to consider actions FSIS should take to prevent and reduce illnesses associated with the handling or consumption of NRTE breaded stuffed poultry products that may appear RTE to consumers.[72] In presenting the charge to the subcommittee, FSIS noted the history of outbreak investigations associated with these products, including the outbreak that resulted in the August 2021 recall, and that these products are labeled as raw and include validated cooking instructions. The Agency also reviewed the results of the consumer research discussed above and noted that FSIS had been petitioned by the NCC in 2016 to establish labeling requirements for NRTE breaded stuffed chicken products and to issue guidance for developing validated cooking instructions. In its charge, FSIS asked the subcommittee to consider several questions on possible measures to address human illnesses associated with NRTE breaded stuffed chicken products.

In a September 28, 2021, report, the subcommittee provided several recommendations that primarily focus on the labeling of NRTE breaded stuffed chicken products. The subcommittee recommended that FSIS re-verify that companies continue to voluntarily label NRTE breaded stuffed chicken products as raw in several places on the label and that labels of these products include validated cooking instructions. The subcommittee also recommended that FSIS update the 2006 labeling guidance to warn consumers not to use microwaves and air fryers if validated instructions are not provided for these methods and to cook the product to a minimum of 165 °F as measured using a food thermometer.[73] The subcommittee further recommended that FSIS add label verification for these products as a recurring task for inspectors and review labels from the 2021 outbreak. In addition, the subcommittee recommended that FSIS require establishments that produce these products to reassess their HACCP plans in light of the outbreaks and encouraged FSIS to conduct targeted consumer outreach regarding these types of products, including creating an FSIS web page highlighting NRTE breaded stuffed chicken products. The subcommittee did not reach consensus on whether FSIS should conduct exploratory sampling for indicator organisms or pathogens or whether it should conduct sampling for *Salmonella* for these products. The subcommittee also did not recommend that FSIS require that establishments apply a lethality treatment to ensure that all NRTE breaded stuffed chicken products are RTE. The subcommittee agreed with the 2016 NCC petition's request for FSIS to establish requirements for the labeling of NRTE breaded stuffed chicken products and publish industry guidance explaining how to validate cooking instructions for such products and recommended that FSIS take such action.

2022 NCC petition supplement. On February 25, 2022, the NCC submitted a supplement to update its 2016 petition to reflect updates in what the NCC stated was the collective understanding of NRTE breaded stuffed chicken products. Among the updates was a request to establish required specifications for color, shapes, and font sizes for certain labeling statements and icons; a request to require an additional ''do not air fry'' statement and icon to the product label; and a request to require a website URL, QR code, or similar mechanism on the label that takes the consumer to a web page that includes a video demonstrating proper cooking methods. The 2022 supplement also requested that the regulations allow statements that emphasize that the product should only be cooked in a conventional oven to be modified to reflect any additional validated cooking instructions, *e.g.,* ''do not air fry'' could be modified to provide validated air fryer cooking instructions.

III. Evaluation of the Status of Salmonella in NRTE Breaded Stuffed Chicken Products Under the PPIA

FSIS has carefully considered the 2021 NACMPI subcommittee recommendations on actions the Agency could take to prevent and reduce illnesses associated with NRTE breaded stuffed chicken products as well as the issues raised in the NCC petition and supplement. In light of the 2021 *Salmonella* outbreak and earlier outbreaks associated with these products, the Agency has concluded that the recommendations, which focus primarily on product labeling and consumer handling practices, are unlikely to be effective in preventing additional foodborne illnesses associated with NRTE breaded stuffed chicken products.

Although the labeling of NRTE breaded stuffed chicken products has undergone significant changes over time to better inform consumers that the products are raw and to provide instructions on how to prepare them safely, these products continue to be associated with *Salmonella* illness outbreaks. Information from outbreak investigations found that some ill persons were not aware that the product was raw and did not follow the cooking instructions on the product label. In addition, one of the consumer behavior

[71] National Advisory Committee on Meat and Poultry Inspection, Notification of Public Meeting (86 FR 48115, August 27, 2021) at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-08/FSIS-2021-0019.pdf.*

[72] 2021 National Advisory Committee on Meat and Poultry Inspection Public Meeting at: *https://www.fsis.usda.gov/news-events/events-meetings/national-advisory-committee-meat-and-poultry-inspection-nacmpi-public.*

[73] National Advisory Committee on Meat and Poultry Inspection: Subcommittee II Stuffed Not-Ready-To-Eat Poultry Products (September 28, 2021) at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-10/Subcommittee_II_Stuffed_Not_Read-to-Eat_Poultry_Products_9-28-21_final_Report.pdf.*

research studies discussed above found that nearly a quarter of the study participants were unaware that the NRTE frozen chicken product they prepared was raw, and 38 percent of the participants reported not using their food thermometer at home to check that NRTE breaded stuffed chicken products were properly cooked. The other study found that 54 percent of participants reported that they prepared NRTE breaded stuffed chicken products using appliances other than or in addition to ovens, even though the labeling of NRTE breaded stuffed chicken products typically states that the product should only be cooked in a conventional oven.

Information from outbreak investigations also found that some case patients reported following the cooking instructions on the label but still became ill. The characteristics and composition of NRTE breaded stuffed chicken products may have contributed to these illnesses. As noted above, NRTE breaded stuffed chicken products are typically cooked from a frozen state, which increases the risk that they will not reach an internal temperature needed to destroy *Salmonella* that may be in the product. In addition, because these products contain multiple ingredients that may cook at different rates, consumers may face challenges in determining an accurate internal temperature of these products even when they use a thermometer as recommended on the product label. These findings suggest that NRTE breaded stuffed chicken products present a serious public health risk, regardless of the information provided on the label.

Thus, because measures that have primarily focused on product labeling and consumer handling practices have not been effective in addressing the public health risk associated with *Salmonella* contaminated NRTE breaded stuffed chicken products, the Agency has decided to re-evaluate the status of *Salmonella* in these products under the PPIA.

Salmonella as an ''*Added Substance*'' *in NRTE Breaded Stuffed Chicken Products*

As noted above, a meat or poultry product is adulterated if, among other circumstances, ''it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated . . . if the quantity of such substance in or on such article does not ordinarily render it injurious to health'' (21 U.S.C. 601(m)(1); 21 U.S.C. 453(g)(1)). As stated in its response to the 2020 petition submitted by Marler Clark, LLP, FSIS has traditionally viewed *Salmonella* as ''naturally occurring'' in food animals. However, the Agency also stated that it was reassessing this interpretation as part of its *Salmonella* in poultry initiative and considering whether *Salmonella* should be considered an adulterant in any poultry products under any of the PPIA's adulteration definitions. As discussed below, FSIS has reassessed whether *Salmonella* should be considered as a ''naturally occurring'' substance in NRTE breaded stuffed chicken products. Based on this assessment, the Agency has tentatively concluded that for these specific products, *Salmonella* is an added substance within the meaning of 21 U.S.C. 453(g)(1) of the PPIA. This tentative determination is limited to *Salmonella* in NRTE breaded stuffed chicken products. FSIS will reassess its traditional view of *Salmonella* as ''naturally occurring'' in other poultry products in the near future as it develops a new strategy to control *Salmonella* in poultry products.[74]

Salmonella is present in the gastrointestinal tract of live birds, and there is evidence that extraintestinal *Salmonella* exist in poultry skin, livers, bones, and bone marrow before processing.[75] Salmonella is not, however, ordinarily found in the muscle tissue of healthy birds. NRTE breaded stuffed chicken products contain raw, comminuted chicken breast meat, trim, or whole chicken breast meat (*i.e.,* further processed chicken parts or comminuted chicken). FSIS sampling data show that further processed chicken parts (breasts, legs, and wings) and comminuted chicken have a higher incidence of *Salmonella* compared to carcasses.[76] This difference is most likely because of cross contamination between positive and negative parts and carcasses during further processing.[77] [78]

Further processing presents various opportunities in which *Salmonella* that is present in certain parts of the bird may be added to interior edible muscle where *Salmonella* is not ordinarily found. For example, *Salmonella* can be found in feather follicles in the skin.[79] [80] When the skin is cut, *Salmonella* can be exposed and spread during processing to previously uncontaminated product.[81] Additionally, many NRTE breaded stuffed chicken products are made with comminuted chicken. Comminuted products are those that are ground, mechanically separated, or hand- or mechanically deboned and further chopped, flaked, minced, or otherwise processed to reduce particle size. Because of the nature of comminuted processes, *Salmonella* contamination in chicken skin and bone can spread throughout an entire batch or lot through cross contamination. FSIS sampling data show that ground and other raw comminuted chicken products that were produced using either bone-in or skin-on source materials were more likely to be contaminated with *Salmonella* than those fabricated from deboned, skinless source materials.[82] In addition, *Salmonella*-negative raw poultry parts and comminuted poultry may become cross-contaminated by contact with *Salmonella*-contaminated equipment or when they are commingled with *Salmonella*-positive products, such as when they are collected in combo bins

[74] United States Department of Agriculture. (October 19, 2021). USDA Launches New Effort to Reduce *Salmonella* Illness Linked to Poultry. *https://www.usda.gov/media/press-releases/2021/10/19/usda-launches-new-effort-reduce-salmonella-illnesses-linked-poultry. see also* Food Safety and Inspection Service. (December 2, 2021). Pilot Projects: *Salmonella* Control Strategies. *https://www.fsis.usda.gov/inspection/inspection-programs/inspection-poultry-products/reducing-salmonella-poultry/pilot.*

[75] Rimet, C.S., et al. (2019). Salmonella Harborage Sites in Infected Poultry That May Contribute to Contamination of Ground Meat. Frontiers in Sustainable Food Systems 3(2). see also Jones-Ibarra, A.M., et al. (2019). Salmonella recovery from chicken bone marrow and cecal counts differ by pathogen challenge method. Poult Sci 98(9): 4104–4112. see also Cox, N.A., et al. (2007). Recovery of Campylobacter and Salmonella Serovars From the Spleen, Liver and Gallbladder, and Ceca of Six-and Eight-Week-Old Commercial Broilers. Journal of Applied Poultry Research 16(4): 477–480.

[76] Sampling Results for FSIS-Regulated Products. Available at: *https://www.fsis.usda.gov/science-data/sampling-program/sampling-results-fsis-regulated-products.*

[77] FSIS Guidance for Controlling Salmonella in Poultry (June 2021) p. 59. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-07/FSIS-GD-2021-0005.pdf.*

[78] Codex Guideline for the Control of Campylobacter and Salmonella in Chicken Meat at: *https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B78-2011%252FCXG_078e.pdf.*

[79] Kim J–W and Slavik M.F. 1996. Cetylpyridinium Chloride (CPC) treatment on poultry skin to reduce attached *Salmonella.* J. Food Prot. 59: 322–326.

[80] Wu D., Alali W.Q., Harrison M.A., and Hofacre C.L. 2014. Prevalence of Salmonella in neck skin and bone of chickens. J Food Prot. 77(7): 1193–1197.

[81] FSIS Guidance for Controlling Salmonella in Poultry (June 2021) pp. 59–60. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

[82] FSIS Guidance for Controlling Salmonella in Poultry (June 2021) pp. 65–66, Table 4 FSIS exploratory sampling test results, raw comminuted chicken by source material composition (6/1/13–6/30/15, 2,688 samples. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

for further processing.[83] [84] *Salmonella*-contaminated equipment used to incorporate the stuffed ingredients into the chicken component of NRTE breaded stuffed chicken products may also contribute to *Salmonella* contamination in these products. Thus, because *Salmonella* may be added to previously uncontaminated chicken parts and comminuted chicken during processing, and because the chicken component of NRTE breaded stuffed chicken products is made from further processed poultry parts or comminuted poultry, FSIS has tentatively concluded that *Salmonella* is an ''added substance'' when present in these specific products.

The Adulteration Standard for NRTE Breaded Stuffed Chicken Products

As noted above, a poultry product that bears or contains any added poisonous or deleterious substance which may render it injurious to health or that bears or contains an inherent substance in sufficient quantity to ordinarily render it injurious to health is adulterated under the PPIA (21 U.S.C. 453(g)(1)). A poultry product can also be found to be adulterated if it is ''unsound, unhealthful, unwholesome, or otherwise unfit for human food'' (21 U.S.C. 453(g)(3)).

Consistent with its approach used to determine the status of certain STEC in raw non-intact beef products and intact cuts to be further processed into non-intact products, to assess the status of *Salmonella* in NRTE breaded stuffed chicken products under the PPIA, FSIS has evaluated the available information on *Salmonella* serotypes associated with human illnesses, the *Salmonella* infectious dose, the severity of human illnesses caused by *Salmonella,* and consumer preparation practices associated with NRTE breaded stuffed chicken products as documented in outbreak investigations associated with these products and as described in the consumer behavior research studies discussed above. Based on this evaluation, FSIS is proposing to declare that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels of 1 CFU/gram or higher are adulterated within the meaning of 21 U.S.C. 453(g)(1) and 21 U.S.C. 453(g)(3) of the PPIA.

Because FSIS has tentatively concluded that *Salmonella* is an added substance in NRTE breaded stuffed chicken products, the Agency has tentatively concluded that these products are adulterated when they contain *Salmonella* at levels of 1 CFU per gram or higher because *Salmonella* at these levels ''may render'' NRTE breaded stuffed chicken products injurious to health (21 U.S.C. 453(g)(1)).[85] Moreover, FSIS is proposing to declare that NRTE breaded stuffed chicken products that are contaminated with *Salmonella* at levels of 1 CFU per gram or above are adulterated within the meaning of 21 U.S.C. 453(g)(3) because when they contain *Salmonella* at these levels, NRTE breaded stuffed chicken products present a sufficiently serious risk of causing human *Salmonella* illnesses such as to make them unhealthful, unwholesome, or otherwise unfit for human food. The basis for this proposed determination is discussed below.

Pathogen serogroups or types associated with human illness. With respect to specific *Salmonella* serotypes, the *Salmonella* outbreaks associated with NRTE breaded stuffed chicken products investigated by FSIS and public health partners have been associated with the serotypes Typhimurium, Heidelberg, I 4,[5], 12:i:–, and Enteritidis and tend to reflect the outbreak serotypes for raw chicken products in general. All outbreaks documented after 2009 have involved *Salmonella* Enteritidis. Additionally, from 2017 to 2021, FSIS and public health partners investigated 13 *Salmonella* outbreaks potentially associated with all raw chicken products.[86] Serotypes Typhimurium, Enteritidis, Blockley, and Infantis account for 92 percent of the outbreak related illnesses. These 4 serotypes account for 77.4 percent of 1,946 illnesses reported in the National Outbreak Reporting System due to *Salmonella* from chicken during the years 2015–2019 (61 outbreaks).[87] Approximately 2,500 *Salmonella* serotypes have been identified,[88] though not all serotypes have been isolated from chicken. Almost all strains of *Salmonella* are pathogenic as they have the ability to invade, replicate and survive in human host cells, resulting in potentially fatal disease,[89] though not all are equally likely to cause illness. Additionally, according to the CDC, reported cases from outbreaks only represent a fraction of actual cases.[90] Thus, because the reported outbreaks represent a small portion of *Salmonella* illnesses, the serotypes that have been found to be associated with *Salmonella* outbreaks do not capture all serotypes that are causing illnesses.

Consistent with its approach used to determine the adulterant status of STEC, FSIS considered declaring the *Salmonella* serotypes responsible for the largest proportion of *Salmonella* illness outbreaks associated with chicken as adulterants in NRTE breaded stuffed chicken products. As the pathogens and products are different, there were different considerations when making this determination. First, *Salmonella* virulence factors are not as well understood as those of STEC. With *Salmonella,* higher virulence is associated with enhanced ability to survive and grow in the gut or to attach to and invade human cells, which is driven by changes to several mechanisms, including mobile genetic elements and resident genes as well as

[83] FSIS Guidance for Controlling *Salmonella* in Poultry (June 2021) pp. 59. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

[84] Codex Guideline for the Control of Campylobacter and Salmonella in Chicken Meat at *https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B78-2011%252FCXG_078e.pdf.*

[85] The adulteration definition in 21 U.S.C. 453(g)(1) includes two separate standards for determining whether a product is adulterated. Under 21 U.S.C. 453(g)(1), if a substance is an ''added substance'' the product is adulterated if the substance ''may render'' the product injurious to health. If the substance is not added, the product is adulterated ''if the quantity of such substance in or on'' the product ''ordinarily'' renders it injurious to health. As discussed in this document, FSIS has tentatively concluded that when present in NRTE breaded stuffed chicken products, *Salmonella* at 1 CFU per gram or higher meets the definition of an ''added substance'' that ''may render'' these products injurious to health. Although the ''may render'' standard is the primary basis for FSIS' tentative determination that the product is adulterated, FSIS also believes that NRTE breaded stuffed chicken products that contain *Salmonella* at 1 CFU per gram or higher meet the more stringent ''ordinarily injurious'' standard for substances that are not added because ordinary consumer handling and preparation, as reported in outbreak investigations and consumer research, may not reduce *Salmonella* to levels that do not result in illness and may also contribute to cross-contamination when these products are prepared in the home.

[86] FSIS Outbreak Reports at: *https://www.fsis.usda.gov/food-safety/foodborne-illness-and-disease/outbreaks.*

[87] Centers for Disease Control and Prevention: National Outbreak Reporting System at: *https://wwwn.cdc.gov/norsdashboard/.*

[88] Brenner F.W., Villar R.G., Angulo F.J., Tauxe R., Swaminathan B. Salmonella nomenclature. J Clin Microbiol. 2000 Jul;38(7):2465–7. doi: 10.1128/JCM.38.7.2465–2467.2000. PMID: 10878026; PMCID: PMC86943.

[89] Shu-Kee Eng, Priyia Pusparajah, Nurul-Syakima Ab Mutalib, Hooi-Leng Ser, Kok-Gan Chan & Learn-Han Lee (2015) *Salmonella:* A review on pathogenesis, epidemiology and antibiotic resistance, Frontiers in Life Science, 8:3, 284–293, DOI: *10.1080/21553769.2015.1051243*

[90] Scallan, E., Hoekstra, R.M., Angulo, F.J., Tauxe, R.V., Widdowson, M., Roy, S.L. Griffin, P.M. (2011). Foodborne Illness Acquired in the United States—Major Pathogens. Emerging Infectious Diseases, 17(1), 7–15. *https://doi.org/10.3201/eid1701.p11101;* Mead, P.S., et al., Food-related illnesses and deaths in the United States. *Emerging Infect Dis,* Oct1999. 5(5) p. 607–625.

variations in gene sequence and expression. In an August 2018 report, the NACMCF was unable to find evidence in the literature for any determinant that correlated with high virulence in human foodborne disease.[91] The NACMCF noted that a few *Salmonella* serotypes are consistently associated with the greatest incidence of human disease. However, this disparity among serotypes may be related to survival in animal hosts or during food harvesting and processing rather than serotype-specific differences in human virulence.

FSIS seeks to better understand *Salmonella* characteristics, including virulence, and actively engages in and encourages research in this area. In October 2021, FSIS launched a new effort aimed at developing a stronger and more comprehensive framework for reducing *Salmonella* illnesses associated with poultry products.[92] As part of this initiative, FSIS will leverage USDA's strong research [93] capabilities and strengthen its partnership with the USDA Research Education and Economics [94] mission area to address data gaps and develop new laboratory methods to guide future *Salmonella* policy. FSIS is also exploring more efficient methods to enumerate pathogens in samples, detect virulence factors in pathogens, and investigate new pathogen characterization methods. As science and laboratory technologies advance, FSIS will continue to use the most innovative and sensitive methods available to protect public health.

Therefore, after considering the current state of the science and laboratory technology, to address the significant public health risk associated with NRTE breaded stuffed chicken products contaminated with *Salmonella,* FSIS is proposing to declare, at certain levels, all *Salmonella* as adulterants in NRTE breaded stuffed chicken products at this time. Although certain *Salmonella* serotypes have been associated with illnesses identified in outbreak investigations associated with NRTE breaded stuffed chicken products, as discussed above, the basis for *Salmonella* virulence is not fully understood, all *Salmonella* serotypes have the potential to cause illness, and, as noted in the 2018 NACMCF report, the disparity among serotypes may be related to factors other than serotype-specific differences in human virulence. In addition, FSIS' current laboratory methods typically require approximately 14 days from sample collection for results to be reported for *Salmonella* serotypes. Therefore, FSIS is tentatively declaring all *Salmonella* at certain levels as an adulterant in NRTE breaded stuffed chicken products. As noted above, FSIS is actively seeking research to address data gaps and develop more efficient laboratory methods to, among other things, enumerate and characterize pathogens and detect virulence factors in pathogens. FSIS will continue to evaluate and, if necessary, refine its proposed determination on the status of *Salmonella* as an adulterant in NRTE breaded stuffed chicken products as advances in science and technology related to pathogen levels, serotypes, and infectious dose become available. FSIS will consider public comments before issuing a final determination of *Salmonella* as an adulterant in NRTE breaded stuff chicken products.

Infectious dose. Foodborne outbreaks are extraordinary events where conditions combine to result in illness among a group of people. It could be that a highly sensitive group of people, *e.g.,* immunosuppressed, consumed contaminated product. It could be that a unique and significantly virulent strain is present in the food. It could be the result of a process failure where a high number of infectious organisms are present in the food. Outbreaks also may occur due to exposure of a large number of consumers to contaminated product. A combination of those four factors—agent virulence, dose, consumer susceptibility, and the extent of exposure—elevates the potential for foodborne outbreaks.

In assessing the status of certain STEC as adulterants in non-intact raw beef products and intact cuts to be further processed into non-intact products, FSIS considered data that indicates that the infectious dose for these specific serogroups is relatively low. Although *Salmonella* data are limited, international and domestic outbreak investigations associated with a variety of food products have been used to estimate the relationship between the number of organisms consumed and the probability of illness. Five *Salmonella* foodborne outbreaks have shown that *Salmonella* can cause illness from exposure of 10 or fewer organisms per person.[95] Additionally, several outbreaks from a range of *Salmonella* serotypes in various food products have shown that exposure from 11 to 420 organisms per person can result in illness.[96] Thus, in these published studies, the infectious dose ranged from 1 to 420 *Salmonella* organisms per person. Using a dose-response model approach utilizing outbreak data, and accounting for variation among

[91] NACMCF (2019). Response to Questions Posed by the Food Safety and Inspection Service Regarding *Salmonella* Control Strategies in Poultry. *Journal of Food Protection* 82(4): 645–668.

[92] USDA Launches New Effort to Reduce *Salmonella* Linked to Poultry (October 19, 2021) at: *https://www.usda.gov/media/press-releases/2021/10/19/usda-launches-new-effort-reduce-salmonella-illnesses-linked-poultry.*

[93] FSIS Food Safety Research Priorities and Studies, available at *https://www.fsis.usda.gov/science-data/research-priorities#:~:text=FSIS%20Data%20Gaps%20%20%20%20Study%20Title,may%20survi%20...%20%209%20more%20rows%20?msclkid=f7030eaea6c411ec9e91f63d1dde98ff.*

[94] USDA Research, Education, and Economics website, available at: *https://www.ree.usda.gov/#:~:text=The%20Research%2C%20Education%2C%20and%20Economics%20%28REE%29%20mission%20area,and%20youth%20through%20integrated%20research%2C%20analysis%2C%20and%20education.?msclkid=261bd671a6c411eca6c1c87daaae90cd.*

[95] Killalea, D., et al., International Epidemiological and Microbiological Study of Outbreak of Salmonella Agona Infection from a Ready to Eat Savoury Snack—I: England and Wales and the United States. 1996, British Medical Journal Publishing Group.; Shohat, T., et al., International Epidemiological and Microbiological Study of Outbreak of Salmonella Agona Infection from a Ready to Eat Savoury Snack—Ii: Israel. BMJ, 1996. 313(7065): p. 1107–1109.; D'aoust, J.Y. and J.Y.D. Aoust, Infective Dose of Salmonella Typhimurium in Cheddar Cheese. American Journal of Epidemiology, 1985. 122(4): p. 717–720.; D'aoust, J.Y., D.W. Warburton, and A.M. Sewell, Salmonella Typhimurium Phage-Type 10 from Cheddar Cheese Implicated in a Major Canadian Foodborne Outbreak. Journal of Food Protection, 1985. 48(12): p. 1062–1066.; Kapperud, G., et al., Outbreak of Salmonella Typhimurium Infection Traced to Contaminated Chocolate and Caused by a Strain Lacking the 60-Megadalton Virulence Plasmid. J Clin Microbiol, 1990. 28(12): p. 2597–601.; Hockin, J.C. et al., An International Outbreak of Salmonella Nima from Imported Chocolate. J Food Prot. 1989. 52(1): p. 51–54.; Lehmacher, A., Bockemuhl, J., and Aleksic. S. Nationwide outbreak of human salmonellosis in Germany due to contaminated paprika and paprika-powdered potato chips. 1995. Epidemiol Infect. 115: p. 501–11.

[96] Kasuga F. et al., Archiving of food samples from restaurants and caterers—Quantitative profiling of outbreaks of foodborne salmonella in Japan. Journal of Food Protection, 2004. 67: p. 2024–2032; Blaser, M.J., and Newman, L.S. A review of human salmonellosis: I. Infective dose. Rev Infect Dis., 1982.4: p.1096–106; Abe, K., N. et al., Prolonged incubation period of Salmonellosis associated with low bacterial doses. Journal of food protection, 2004. 67: p. 2735–2740; Hara-Kudo, Y. and K. Takatori, Contamination level and ingestion dose of foodborne pathogens associated with infections. Epidemiology and Infection, 2011. 139: p. 1505–1510; Hennessy T.W., et al., A national outbreak of Salmonella enteritidis infections from ice cream. N Engl J Med, 1996. 334(20): p. 1281–6; Hedberg C.W., et al., A multistate outbreak of Salmonella javiana and Salmonella oranienburg infections due to consumption of contaminated cheese. *JAMA,* 1992. 268(22): p. 3203–7; Todd, E.C., et al., Outbreaks where food workers have been implicated in the spread of foodborne disease. Part 4. Infective doses and pathogen carriage. *J Food Prot,* 2004. 71: p. 2339–73; Scheil W., et al., A South Australian Mdbandaka outbreak investigation using a database to select controls. *Aust NZ J Public Health,* 1998. 22(5): p. 536–9; Tamber, S., E. Swist, and D. Oudit, Physicochemical and bacteriological characteristics of organic sprouted chia and flax seed powders implicated in a foodborne Salmonellosis outbreak. *Journal of Food Protection,* 2016. 79(5): p. 703–709.

outbreaks represented by the data (predominately Enteritidis and Typhimurium serotypes), the average *Salmonella* median illness dose was 36 colony forming units (CFU) (with 95% prediction interval of 0.69–1.26 × 10^7 CFU).[97] The median illness dose refers to the dose at which 50% of individuals in an exposed population will experience symptomatic illness. The average median illness dose and its prediction interval reflect variability among outbreak strains and exposed populations and uncertainty about the dose-response relationship. A similar dose-response approach was developed by the World Health Organization Food and Agriculture Organization of the United Nations for risk assessments for *Salmonella* in eggs and broiler chickens.[98] Also using outbreaks, the model estimated a 13 percent chance of becoming ill if ingesting 100 organisms. Even at the level of 1 organism ingested, there was still a non-zero chance of illness (0.25 percent). These *Salmonella* outbreaks as well as dose-response modeling of *Salmonella* outbreaks, suggest that exposure to a small number of *Salmonella* organisms can result in foodborne illness. Assuming a minimum of 0.5 log (68%) *Salmonella* reduction likely achieved with even partial cooking, the proposed level of 1 CFU per gram (assuming a typical 70–88 gram portion size) should significantly mitigate the risk of illness associated with NRTE breaded stuffed chicken products.

Taking into account: (1) the range of infectious doses referenced above (between 1–420 CFU), in particular that a *Salmonella* dose-response model based on outbreaks showed the average *Salmonella* median illness dose was 36 CFU; (2) that most consumers will cook NRTE breaded stuffed chicken products to some degree, resulting in mitigation of the exposure to the pathogen; (3) that the average chicken portion in a NRTE breaded stuffed chicken product is approximately 70–88 grams; [99] and (4) that, at this point, technology does not exist to identify serotype pathogenicity factors in a timely manner, FSIS has tentatively concluded that *Salmonella,* at a concentration lower than 1 CFU per gram, would not ordinarily render this type of NRTE commodity injurious to health or make them unwholesome, unhealthful or otherwise unfit for human food. The Agency believes that this target is also achievable under industry production conditions and that laboratory analytical methodology is available to detect organisms at this level. FSIS requests comments on this tentative conclusion and whether there are studies that support an alternative adulteration threshold.

Severity of illnesses. When FSIS declared certain STEC as adulterants in raw non-intact beef products and intact cuts to be further processed into non-intact beef products, the Agency considered the severity of the consequences of an infection with these pathogens and noted that they had been linked with serious, life-threatening human illnesses, such as hemorrhagic colitis and HUS. Although the symptoms of *Salmonella* infections are typically not reported to be as severe as those associated with STEC, *Salmonella* can cause bloody diarrhea, fever, abdominal cramps, nausea, and vomiting. In some instances, *Salmonella* enters the blood and makes its way to other areas of the body including, but not limited to, the heart, lung, bone, joints and the central nervous system.[100] This can result in severe illness requiring hospitalizations and even death, especially in vulnerable populations, such as very young, elderly, and immunocompromised individuals. Even when *Salmonella* is no longer detectable in the body, prior *Salmonella* illness has also been associated with an increased risk in colon cancer.[101] And can cause debilitating, long-lasting conditions including inflammatory bowel disease, irritable bowel syndrome and reactive arthritis.

Furthermore, a study that allows for a comparison of case-fatality proportions of both *Salmonella* and STEC O157 demonstrates a higher frequency of deaths among *Salmonella* cases than among STEC O157 cases.[102] The estimated annual domestic foodborne illnesses reported in the study were 1,027,561 and 63,153 for *Salmonella* and STEC O157, respectively. Annual deaths from domestic foodborne illnesses are 378 and 20 for *Salmonella* and STEC O157, respectively. Therefore, *Salmonella* deaths occur at a frequency of 4 per 10,000 illnesses, while STEC O157 deaths occur at a frequency of 3 per 10,000 illnesses.

When FSIS declared certain STEC as adulterants in raw non-intact beef products and intact cuts to be further processed into non-intact products, there was a limited history of documented illnesses and outbreaks associated with these serogroups in raw beef. In fact, when FSIS declared the six non-O157:H7 STEC as adulterants, the Agency noted that the illnesses associated with these strains had not primarily been due to contamination in beef (76 FR 58158). However, because these pathogens had been associated with severe, debilitating illnesses, particularly in vulnerable populations, FSIS determined that, in order to protect public health, it was necessary to evaluate their status as adulterants in certain raw beef products under the FMIA.

In contrast, there has been a long history of documented *Salmonella* illness outbreaks associated with NRTE breaded stuffed chicken products produced by different establishments that included illnesses that required hospitalization. The most recent multi-state outbreak in 2021 included 36 cases from 11 states, and of 32 people with information available, 12 were hospitalized. The actual number of cases and hospitalizations are likely higher because the overwhelming number of *Salmonella* illnesses are not diagnosed and reported to public health officials.[103]

In addition, because NRTE breaded stuffed chicken products are typically stored in the freezer and consumed over time, *Salmonella* illness outbreaks associated with these products tend to persist for several months, even when implicated products represent a few days of production. Thus, the long, recurring history and ongoing nature of *Salmonella* illness outbreaks associated with NRTE breaded stuffed chicken products raise significant concerns about the impact on human health of *Salmonella* contamination in these products.

Consumer cooking practices. In addition to their relatively low infectious dose and potential to cause severe illness, certain STEC are considered as adulterants in raw non-intact beef product because there is evidence to show that these strains can survive what many consumers consider to be proper cooking of these products. Information from the outbreak investigations associated with NRTE

[97] Teunis P.F., et al., Dose-response modeling of Salmonella using outbreak data. *Int J Food Microbiol,* 2010. 144(2): p. 243–9.

[98] World Health Organization, Risk assessment of Salmonella in eggs and broiler chickens, March 25, 2002. Available at: *https://www.who.int/publications/i/item/9291562293.*

[99] Based on product formulation information.

[100] Batz, M.B., et al., Long-Term consequences of foodborne illness. *Infect Dis Clin North Am,* Sept 2013. 28(3) p. 599–661; Hohmann, E.L., Nontyphoidal Salmonellosis, *Clin Infect Dis,* Sept 2001. 32 p. 263–269; Heymann, D. Salmonellosis. Control of Communicable Disease Manual, 2021.

[101] Mughini-Gras, L. et al. Increased colon cancer risk after severe *Salmonella* infection. *PLoS ONE,* 2018. 13(1): p. 1–19. *https://doi.org/10.1371/journal.pone.0189721.*

[102] Scallan, et al., 2011.

[103] Scallan, et al. 2011; Mead, P.S., et al., Food-related illnesses and deaths in the United States. *Emerging Infect Dis,* Oct1999. 5(5) p. 607–625.

breaded stuffed chicken products and the 2020 consumer behavior research report show that with respect to consumer preparation practices, *Salmonella* in NRTE breaded stuffed chicken products presents similar issues to STEC-contaminated raw ground beef because both products are frequently consumed after preparation that may not destroy pathogens in the product.

As noted earlier, NRTE breaded stuffed chicken products contain raw, comminuted chicken breast meat or whole chicken breast meat, but the finished product is heat-treated only to set the batter or breading on the exterior of the product, which is not sufficient to destroy *Salmonella* that may be present in the product but may impart an RTE appearance to the consumer. Information from *Salmonella* illness outbreak investigations associated with NRTE stuffed chicken products show that, even with labeling that prominently discloses that these products are raw, the fact that they may appear fully cooked and are typically prepared from a frozen state may lead some consumers to believe that the products are properly cooked when reheated for aesthetic or palatability purposes rather than to a temperature sufficient to kill pathogenic bacteria as instructed on the product labeling. On the other hand, information from some earlier *Salmonella* outbreak investigations associated with NRTE breaded stuffed chicken product found that some cases that became ill reported following the validated cooking instructions on the product label. Thus, information from outbreak investigations also shows that the ordinary consumer cooking practices for NRTE breaded stuffed chicken products may not be sufficient to destroy *Salmonella* that may be present in the product regardless of the information provided on the product label.

Also, as discussed above, FSIS consumer research on preparation of NRTE breaded stuffed chicken product found that despite reading the product label, 22 percent of participants were unaware that the NRTE breaded stuffed chicken product they prepared was raw, and 11 percent incorrectly believed that the product was fully cooked. The study also found that while 99 percent of the participants self-reported that they had read the manufacturer's instructions for the NRTE breaded stuffed chicken products, which instructed consumers to use a food thermometer to check that the product reached an internal temperature of 165 °F, only 77 percent of a control group used a thermometer. With respect to handwashing, the study found that during preparation of NRTE breaded stuffed chicken products, handwashing was attempted only 5 percent of the time it was required, *e.g.,* after touching the NRTE breaded stuffed chicken product. The study concluded that this was most likely because the participants were preparing a NRTE frozen breaded product rather than fresh poultry. Thus, these findings show that ordinary consumer handling of NRTE breaded stuffed chicken product may contribute to cross contamination, which may be why some outbreak cases that reported following validated cooking instructions still became ill.

In addition, the 2022 study on appliances used to prepare NRTE breaded stuffed chicken products discussed above found that although the labeling of NRTE breaded stuffed chicken products typically includes instructions to cook the product in an oven, 54 percent of study respondents reported preparing these products using appliances other than or in addition to ovens.

Proposed determination. After careful consideration of the information presented above, FSIS has tentatively determined that NRTE breaded stuffed chicken products contaminated with *Salmonella* present a significant public health concern because data from outbreak investigations as well as consumer behavior research studies show that common consumer preparation practices associated with these products may not destroy organisms that may be present in the product. Information from consumer behavior research also shows that common consumer handling of NRTE breaded stuffed chicken products may also contribute to cross contamination. As discussed above, *Salmonella* has been associated with severe and debilitating human illness and available data suggest that the *Salmonella* infectious dose is relatively low. In addition, because NRTE breaded stuffed chicken products have been associated with several *Salmonella* illness outbreaks, and because of the recurring nature of these outbreaks, FSIS has tentatively determined that the status, under the PPIA, of NRTE breaded stuffed chicken products contaminated with *Salmonella* must depend on whether there is adequate assurance that subsequent handling of the product will result in a product that does not contain *Salmonella* at levels sufficient to cause human illness when consumed (64 FR 2803). Information from *Salmonella* illness outbreaks associated with NRTE breaded stuffed chicken products and the information on consumer handling practices with respect to these products show that labeling that informs consumers that these products are raw and how to prepare them safely fails to provide such assurance. Thus, because *Salmonella* can survive ordinary handling and cooking practices for NRTE breaded stuffed chicken products, FSIS has tentatively concluded that the appropriate response to protect public health is to ensure that products contaminated with *Salmonella* at levels sufficient to cause human illness are excluded from commerce.

Therefore, for the reasons discussed above, FSIS is proposing to declare that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels of 1 CFU/gram or higher are adulterated as defined in 21 U.S.C. 453(g)(1)) and 21 U.S.C 453(g)(3)) of the PPIA. FSIS requests comments on this proposed determination and whether there are alternative bases for determining adulteration of these NRTE products.

IV. Proposed Policy Implementation

HACCP Reassessment

The HACCP system regulations require that every establishment reassess the adequacy of its HACCP plan at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plan (9 CFR 417.4(a)(3)). If finalized, FSIS' proposed determination that *Salmonella* at levels of 1 CFU/gram or higher is an adulterant in NRTE breaded stuffed chicken products would be such a change. Thus, if FSIS finalizes this proposed determination, all establishments that produce Heat Treated but Not Fully Cooked—Not Shelf Stable NRTE breaded stuffed chicken products would need to reassess their HACCP plans. Establishments that make changes to their production process as a result of their reassessment would also need to re-validate their HACCP plans. FSIS would issue instructions to inspection program personnel in establishments that produce NRTE breaded stuffed chicken products to verify that these establishments have completed their reassessment before the effective date of any final determination resulting from this proposal.

Proposed Implementation and Status of Laboratory Methods

As noted above, FSIS is proposing a routine sampling and verification testing program for *Salmonella* in NRTE breaded stuffed chicken products in which the Agency would collect and analyze samples from the chicken component prior to breading and stuffing, for *Salmonella* at 1 CFU per gram or higher. FSIS would collect the

verification samples after the establishment has completed all processes needed to prepare the chicken component to be stuffed and breaded to produce a final NRTE breaded stuffed chicken product. Should FSIS finalize this proposed testing program, the Agency would consider NRTE breaded stuffed chicken products produced with a chicken component that tested positive for *Salmonella* at levels of 1CFU per gram or higher to be adulterated. FSIS would sample the chicken component prior to stuffing and breading and would perform, evaluate, determine, and report whole genome sequencing (WGS), serotype, levels, and antimicrobial resistance (AMR) profile for each *Salmonella* isolate identified in the sampling program.[104]

If FSIS finalizes this proposed sampling plan, data gathered from the sampling plan would enable the Agency to more precisely gauge the level of hazard posed by *Salmonella* in the chicken component of these products prior to stuffing and breading. As noted above, FSIS intends to further evaluate and, if necessary, refine the proposed status of *Salmonella* as an adulterant in NRTE breaded stuffed chicken products as advances in science and technology related to pathogen levels, serotypes, and virulence genes become available.

The detection and isolation methodology for *Salmonella* is described in MLG chapter 4.13, of the FSIS Microbiology Laboratory Guidebook.[105] When sampling the chicken component of NRTE breaded stuffed chicken products under this proposed determination, FSIS would collect one pound of the chicken component prior to stuffing and breading from the establishment to analyze 325 grams per test for *Salmonella.* Samples would be initially screened, post-enrichment, for the presence or absence of *Salmonella.* Samples that screen negative would be reported as ''negative.'' For samples that screen positive, FSIS would use selective and differential culture-based media and proteomics testing to identify the presumptive positive samples. All presumed positive samples would be subject to confirmatory tests and enumeration. A sample is considered confirmed positive for *Salmonella* after completion of both cultural and confirmatory tests. Any chicken component ''confirmed positive'' with *Salmonella* levels of 1 CFU per gram or higher prior to stuffing and breading would need to be diverted to a use other than NRTE breaded stuffed chicken products. Any NRTE breaded stuffed chicken products that contain a chicken component confirmed positive with *Salmonella* levels of 1 CFU per gram or higher prior to stuffing and breading would be considered adulterated.

FSIS estimates that negative results would routinely be available within 48 hours of shipment of the samples to the laboratory, assuming overnight sample transit coupled with a 24-hour sample enrichment and screening at the laboratory. For samples that screen positive, an additional 2 to 4 days may be necessary for a confirmed positive or negative result. Enumeration is run concurrently with confirmatory testing and would be reported with the confirmed positive result. *Salmonella* serotypes, WGS, and AMR profile would require at least 14 days for result reporting. These timeframes and methods may change as FSIS incorporates new laboratory technologies into its sampling verification program.[106]

To help inform FSIS verification sampling plan resulting from this proposal, FSIS conducted a study with the Food Emergency Response Network (FERN) Cooperative Agreement Laboratories to gather data at retail to provide information about the positive rate of *Salmonella* in NRTE breaded stuffed chicken products. Through the FERN, FSIS has cooperative agreements with 11 geographically dispersed state laboratories that participated in this study: California Department of Public Health Food and Drug Laboratory, Colorado Department of Agriculture, Florida Department of Agriculture, State Hygienic Laboratory of Iowa, Michigan Department of Health and Human Services, Minnesota Department of Agriculture, Missouri Department of Health, New York Department of Health Wadsworth Center, Ohio Department of Agriculture, Texas State Chemist Laboratory, and Virginia Division of Consolidated Laboratory Services. From July 1, 2022, to September 30, 2022, these laboratories purchased locally available, NRTE breaded stuffed chicken products at retail and tested them for the presence of *Salmonella* and sanitary indicator aerobic organism counts using the current validated methods that each state laboratory employed. The laboratories obtained approximately 15 samples per month depending on availability in their local area and retail stores. Fifty-eight of the 487 samples collected were positive for the presence of *Salmonella.* The laboratories that used *Salmonella* detection and sample preparation methods that are the same as FSIS MLG 4.12 found *Salmonella* in 36 (27%) samples. Out of 58 isolates, 18 (31%) were *Salmonella* Enteritidis, 22 (38%) *Salmonella* Infantis, 15 (26%) *Salmonella* Kentucky, and 3 (5%) *Salmonella* Typhimurium (3/58). These serotypes include those serotypes associated with the most recent NRTE breaded stuffed chicken product outbreaks and the most common serotypes associated with outbreak related illnesses for all chicken products.[107] [108]

The 27 percent-positive rate for *Salmonella* in NRTE breaded stuffed chicken products detected in retail samples is comparable to the 29 percent positive rate detected in FSIS' sampling of ground chicken.[109] These rates are higher than the *Salmonella*-positive rates for other raw chicken products, which suggests that NRTE breaded stuffed chicken products and ground chicken have a higher risk per serving than other raw chicken products. However, consumer preparation practices are more likely to mitigate the risk associated with ground chicken because, unlike NRTE breaded stuffed chicken products, ground chicken

[104] This information would be reported as with any test result. Inspectors would get result through PHIS. FSIS would report out through Laboratory Information Management System (LIMS) Direct for industry as well as the result would be in the new PHIS sample result history report. The results would also be in public release data sets that the agency does quarterly. The WGS data would also be uploaded to NCBI as are other Salmonella isolates.

[105] FSIS Microbiology Laboratory Guidebook available at: *https://www.fsis.usda.gov/news-events/publications/microbiology-laboratory-guidebook.*

[106] For example, on July 8, 2022, FSIS announced that it had awarded a contract to bioMérieux to incorporate its non-enrichment quantification system for *Salmonella,* 'GENE–UP™ QUANT *Salmonella,*' into the Agency's laboratory system. The Agency evaluated commercially available quantification systems and determined that this technology is the most appropriate for use in the high throughput FSIS laboratory environment. FSIS stated that in the future, the Agency would announce when the method is available and when it will be implemented in all three FSIS food testing laboratories. FSIS also stated that it plans to extend pathogen quantification technology to sample types other than raw poultry rinses in the future (see FSIS Constituent Update, Jul 8, 2022, *FSIS to include Salmonella Quantification in Raw Poultry Rinse Samples.* Available at: *https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-july-8-2022#:~:text=Salmonella%20quantification%20is%20a%20significant%20step%20in%20FSIS%E2%80%99,regulatory%20sample%2C%20not%20solely%20its%20presence%20or%20absence.*

[107] FSIS Outbreak Reports at: *https://www.fsis.usda.gov/food-safety/foodborne-illness-and-disease/outbreaks.*

[108] Centers for Disease Control and Prevention: National Outbreak Reporting System at: *https://wwwn.cdc.gov/norsdashboard/.*

[109] USDA Food Safety and Inspection Service Annual Sampling Report Fiscal Year 2021: *https://www.fsis.usda.gov/sites/default/files/media_file/2022-02/FY2021-Sampling-Summary-Report.pdf.*

clearly appears raw and is not typically cooked from a frozen state.

Thus, given the number of outbreak investigations associated with NRTE stuffed chicken products and the consumer handling practices identified in both outbreak investigations and consumer behavior research, the disposition of the chicken component of NRTE breaded stuffed chicken products prior to stuffing and breading is an important factor in mitigating the public health risk associated with these products. Therefore, FSIS is proposing a verification sampling program for *Salmonella* in NRTE breaded stuffed chicken products in which the Agency would test the chicken component of these products prior to stuffing and breading and require that chicken component lots that confirm positive for *Salmonella* at 1 CFU per gram or higher be diverted to a use other than NRTE breaded stuffed chicken products. Under this proposal, such lots could be diverted for use in a fully cooked poultry product or for use in another raw poultry product, such as ground chicken, in which consumer preparation is more likely to mitigate the risk. FSIS has tentatively concluded that such a program would effectively address the serious public health risk associated with *Salmonella* in NRTE breaded stuffed chicken products while minimizing the potential loss associated with product that is confirmed positive for *Salmonella* at 1 CFU per gram. FSIS requests comments on this proposed verification sampling plan and possible alternative sampling plans. FSIS specifically requests comments on whether the Agency's verification sampling program should collect and analyze samples from the final packaged NRTE breaded stuffed chicken product rather than the chicken component prior to stuffing and breading.

Sampled Lot

When FSIS tests a product sample for adulterants, the Agency withholds its determination as to whether product is not adulterated, and thus eligible to enter commerce, until all test results that bear on the determination have been received (77 FR 73401, Dec 10, 2012). Under this policy, establishments must maintain control of products tested for adulterants to ensure that the products do not enter commerce while waiting for receipt of the test results. Thus, if FSIS finalizes its proposed routine *Salmonella* verification testing program for the chicken component in NRTE breaded stuffed chicken products prior to stuffing and breading, establishments that produce these NRTE products would need to control and maintain the integrity of the sampled chicken component lot pending the availability of test results.

Under any final verification sampling plan, FSIS IPP would give establishments that produce NRTE breaded stuffed chicken product advance notice before they collect a product sample from the chicken component for *Salmonella* to give the establishment enough time to control the sampled lot. The sampled lot is the product represented by the sample collected and analyzed by FSIS. Establishments are responsible for providing a supportable basis for defining the sample lot. For sampling purposes, product lots should be defined such that they are microbiologically independent. Microbiological independence is documented by separation, *e.g.,* physical, temporal, or by sanitation intervention, that clearly delineates the end of one production lot and the beginning of the next. The microbiological results from one test are independent of prior or later lots. In other words, under this proposed verification plan, if a chicken component sample collected prior to stuffing and breading tests positive for *Salmonella* at a level of 1 CFU per gram or higher, products from other chicken component lots should not be implicated.

Generally, FSIS recommends that establishments develop and implement in-plant sampling plans that define production lots or sub-lots that are microbiologically independent of other production lots or sub-lots. Production lots that are so identified may bear distinctive markings on the shipping cartons. FSIS has issued guidance to help establishments comply with the Agency's policy that does not allow product that FSIS has tested for adulterants to enter commerce until test results become available.[110] In addition to providing guidance on adequate control measures establishments can implement for products tested for adulterants, the document also includes guidance on how establishments can define a product lot in order to determine the amount of product that must be controlled pending test results. If FSIS finalizes its proposed *Salmonella* verification sampling for NRTE breaded stuffed chicken product, FSIS would update the guidance to cover *Salmonella* sampling of the chicken component of NRTE breaded stuffed chicken products before the effective date of the sampling program.

As discussed above, under this proposed verification sampling plan, establishments would be required to control the chicken component product sampled by FSIS and not incorporate it into NRTE breaded stuffed chicken products pending the test results. If test results detect *Salmonella* at a level of 1 CFU per gram or higher and the chicken component has been incorporated into a NRTE breaded stuffed chicken product, FSIS would consider the NRTE breaded stuffed chicken product that contains the chicken component represented by the sampled lots to be adulterated and request that the producing establishment recall any product implicated by the product lot that is in commerce. In addition, FSIS would issue a noncompliance record (NR) and, depending on the circumstances, take other appropriate enforcement action as authorized in 9 CFR part 500 because the establishment would have produced and shipped adulterated product. Such actions may include immediately suspending inspection or issuing a Notice of Intended Enforcement Action.

State Programs and Foreign Government Programs

States that have their own poultry inspection programs for poultry products produced and transported solely within the State are required to have mandatory ante-mortem and post-mortem inspection, reinspection, and sanitation requirements that are at least equal to those in the Federal Meat Inspection Act (21 U.S.C. 661(a)(1)). Therefore, if FSIS finalizes this proposed determination, these States would need to adopt sampling procedures and testing methods to detect *Salmonella* at 1 CFU/gram or above in the chicken component in NRTE breaded stuffed chicken products that are at least equal to FSIS' procedures and testing methods for State-inspected establishments that produce these products.[111] Any State participating in a Cooperative Interstate Shipment Program would need to adopt FSIS' sampling procedures and testing methods to detect *Salmonella* at 1 CFU/gram or above in NRTE breaded stuffed chicken products in selected establishments that produce these products for shipment in interstate commerce (21 U.S.C. 472). Foreign countries that are eligible to export poultry products to the United States must apply inspection, sanitary, and

[110] FSIS Compliance Guideline: Controlling Meat and Poultry Product Pending FSIS Test Results (2013) at: *https://www.fsis.usda.gov/guidelines/2013-0003.*

[111] FSIS is not aware of any State-inspected establishments that produce NRTE stuffed chicken products.

other standards that are equivalent to those that FSIS applies to those products (21 U.S.C. 620). Thus, if FSIS finalizes this proposed determination, in evaluating a foreign country's poultry products inspection system to determine the country's eligibility to export poultry products to the United States, FSIS would consider whether the sampling procedures and testing methods to detect *Salmonella* at 1 CFU/gram in the chicken component in NRTE breaded stuffed chicken products prior to stuffing and breading the country uses are equivalent to those that FSIS uses.

V. Anticipated Costs and Benefits Associated With This Proposed Determination

FSIS has considered the economic effects of this proposed determination. The full analysis is published on the FSIS website as supporting documentation to this **Federal Register** Notice ([insert link]). FSIS is seeking comment on the information and assumptions used in the cost-benefit analysis. A summary of the analysis follows.

Summary of Estimated Costs and Benefits

If finalized, this proposed determination is expected to impact six domestic establishments and cost industry at least $4.33 million annually, assuming a 7 percent discount rate over a ten-year period.[112] These costs are associated with HACCP plan reassessments, holding sampled chicken components in cold storage awaiting test results, and the costs associated with developing and implementing an establishment-conducted sampling program. To varying degrees, industry may also incur costs associated with their individual responses to this policy. The Agency would incur costs associated with sampling and testing for *Salmonella* and conducting FSAs. However, these costs are likely more than offset by consumer and industry benefits.

The benefit from reduced outbreak-related recalls depends on the number of recalls this proposed determination would prevent annually. With a total estimated annual industry cost of $4.33 million, and the estimated quantified benefit of one prevented outbreak-related recall being $25.85 million, total benefits would exceed total costs if the proposed determination prevents at least 1 outbreak-related recall every 5.96 years ($25.85/$4.33).[113] Although the proposed policy may not prevent every possible *Salmonella*-related outbreak or illness in these products, FSIS believes the benefits of the proposed policy would exceed the costs if the policy contributes to preventing at least 1 outbreak-related recall every 60 months.[114] Between 2006 and 2021 there was one outbreak every 16.4 months average (15 years/11 outbreaks). Also, according to the CDC, reported cases from outbreaks only represent a fraction of actual cases; therefore, the health benefits associated with this new policy is likely to be higher than estimated in the published CBA.[115]

Potential Impact on Small Businesses

In the CBA, FSIS defines high-volume establishments as establishments that produce at least 1 million pounds of NRTE stuffed chicken products annually and low-volume establishments as establishments that produce less than 1 million pounds annually. Using these categories, three of the six establishments that produce NRTE stuffed chicken products were classified as high-volume, and three establishments as low-volume. All three of the low-volume establishments are HACCP size small or very small.[116] FSIS expects the cost burden of this proposed determination on low-volume establishments would be small. Nearly 90 percent of production at these three low-volume establishments is product other than NRTE stuffed chicken products. These establishments would choose to incur costs based on their own economic rationale.

In addition, if FSIS finalizes this proposed determination, FSIS intends to implement routine testing for *Salmonella* and would allow industry time to implement possible changes to food safety systems. A small business would have this time to prepare for changes, lowering the burden.

FSIS also assumes establishments needing monetary assistance to comply with any final determination resulting from this proposal would take advantage of the grants and financial options available to small establishments. More information on these loans and grants can be found on the FSIS website.[117]

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(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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[112] FSIS used its Public Health Information System (PHIS) data accessed on 07/28/2022.

[113] Numbers may not calculate due to rounding.

[114] Numbers rounded to the nearest month.

[115] Scallan, E., Hoekstra, R.M., Angulo, F.J., Tauxe, R.V., Widdowson, M., Roy, S.L. Griffin, P.M. (2011). Foodborne Illness Acquired in the United States—Major Pathogens. Emerging Infectious Diseases, 17(1), 7–15. *https://doi.org/10.3201/eid1701.p11101.*

[116] Under the HACCP size definitions, large establishments have 500 or more employees, small establishments have between 10 and 499 employees, and very small establishments have less than 10 employees or less than $2.5 million in annual revenue. 61 FR 38806.

[117] Grants and Financial Options, USDA FSIS *https://www.fsis.usda.gov/inspection/apply-grant-inspection/grants-financial-options.*

Additional Public Notification

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

Paul Kiecker,

Administrator.

Appendix A: Salmonella Outbreak Investigations Associated With All Chicken Products 1998–2020

Running total	Data source	Year	Poultry type	Product	Subtype
1	CDC NORS	1998	Chicken	chicken, unspecified	Enteritidis.
2	CDC NORS	1998	Chicken	chicken	Enteritidis.
3	CDC NORS	1998	Chicken	chicken	Enteritidis.
4	CDC NORS	1998	Chicken	chicken, unspecified	Group E1.
5	CDC NORS	1998	Chicken	chicken, unspecified	Typhimurium.
6	PubMed	1998	Chicken	chicken Kiev	Typhimurium.
7	CDC NORS	1999	Chicken	chicken salad	Enteritidis.
8	CDC NORS	1999	Chicken	chicken, unspecified	Enteritidis.
9	CDC NORS	1999	Chicken	chicken, unspecified; mung bean sprouts.	Enteritidis.
10	CDC NORS	1999	Chicken	chicken, unspecified	Give.
11	CDC NORS	1999	Chicken	chicken, baked	Hadar.
12	CDC NORS	1999	Chicken	chicken, unspecified	Hadar.
13	CDC NORS	1999	Chicken	chicken, bbq	Heidelberg.
14	CDC NORS	1999	Chicken	chicken, unspecified	Javiana.
15	CDC NORS	1999	Chicken	chicken, other	Muenchen.
16	CDC NORS	1999	Chicken	burrito, chicken; taco, chicken; chicken, nuggets/fingers.	Typhimurium.
17	CDC NORS	1999	Chicken	deli meat, sliced chicken	Unsubtyped.
18	CDC NORS	1999	Chicken	chicken, unspecified	Unsubtyped.
19	CDC NORS	2000	Chicken	chicken, unspecified	Group B.
20	CDC NORS	2000	Chicken	chicken, bbq	Group C1.
21	CDC NORS	2000	Chicken	chicken, fried	Newport.
22	CDC NORS	2000	Chicken	chicken, unspecified	Newport.
23	CDC NORS	2000	Chicken	chicken, unspecified	Typhimurium.
24	CDC NORS	2001	Chicken	chicken, grilled	Braenderup.
25	CDC NORS	2001	Chicken	chicken, nuggets/fingers	Enteritidis.
26	CDC NORS	2001	Chicken	chicken, baked	Enteritidis.
27	CDC NORS	2001	Chicken	chicken, fried	Newport.
28	CDC NORS	2001	Chicken	specialty salads unspecified	Typhimurium.
29	CDC NORS	2001	Chicken	chicken, other	Typhimurium.
30	CDC NORS	2001	Chicken	chicken, other	Unsubtyped.
31	CDC NORS	2001	Chicken	chicken, other	Unsubtyped.
32	CDC NORS	2002	Chicken	chicken	Enteritidis.
33	CDC NORS	2002	Chicken	chicken, other	Rubislaw.
34	CDC NORS	2002	Chicken	chicken, baked	Unsubtyped.
35	CDC NORS	2003	Chicken	sauces, unspecified; chicken, unspecified.	Enteritidis.
36	CDC NORS	2003	Chicken	chicken, baked	Enteritidis.
37	CDC NORS	2003	Chicken	chicken, baked	Newport; Muenster; Heidelberg.
38	CDC NORS	2003	Chicken	chicken, unspecified	Typhimurium.
39	CDC NORS	2003	Chicken	chicken, other	Unsubtyped.
40	CDC NORS	2003	Chicken	chicken, roasted	Unsubtyped.
41	CDC NORS	2004	Chicken	chicken, raw	Enteritidis.
42	CDC NORS	2004	Chicken	chicken, roasted	Group B.
43	CDC NORS	2004	Chicken	chicken, curry	Group D1.
44	CDC NORS	2004	Chicken	chicken, baked	Hadar.
45	CDC NORS	2004	Chicken	chicken, other	Heidelberg.
46	CDC NORS	2004	Chicken	chicken, unspecified	Heidelberg.
47	CDC NORS	2004	Chicken	chicken, unspecified	Heidelberg.
48	CDC NORS	2004	Chicken	chicken, other	Thompson.
49	CDC NORS	2004	Chicken	chicken, baked	Typhimurium.
50	CDC NORS	2004	Chicken	chicken, other	Typhimurium.
51	CDC NORS	2004	Chicken	chicken, grilled	Typhimurium var Cope.
52	CDC NORS	2004	Chicken	chicken, unspecified	Unsubtyped.
53	CDC NORS	2005	Chicken	chicken, grilled	Enteritidis.

Running total	Data source	Year	Poultry type	Product	Subtype
54	CDC NORS	2005	Chicken	stuffing/dressing; gravy, chicken; chicken, other.	Enteritidis.
55	CDC NORS	2005	Chicken	chicken, grilled	Enteritidis.
56	CDC NORS	2005	Chicken	stuffed chicken	Enteritidis; Typhimurium; Kentucky.
57	CDC NORS	2005	Chicken	chicken, other	Heidelberg.
58	CDC NORS	2005	Chicken	stuffed chicken (Chicken Broccoli and Cheese).	Heidelberg.
59	CDC NORS	2005	Chicken	chicken, other	Unsubtyped.
60	CDC NORS	2006	Chicken	chicken	Agona.
61	CDC NORS	2006	Chicken	chicken, baked	I 4,[5],12:i:-.
62	CDC NORS	2006	Chicken	chicken, unspecified	Newport.
63	CDC NORS	2006	Chicken	chicken, teriyaki; sushi, unspecified.	Typhimurium.
64	PubMed	2006	Chicken	Chicken Kiev, Chicken Broccoli and Cheese, Chicken Mushrooms and Cheddar, Chicken Mushrooms in Wine Sauce, and/or Chicken Romanov.	Typhimurium.
65	CDC NORS	2006	Chicken	chicken, unspecified	Typhimurium var Cope.
66	CDC NORS	2007	Chicken	chicken, bbq	Braenderup.
67	CDC NORS	2007	Chicken	chicken dishes, unspecified	Enteritidis.
68	CDC NORS	2007	Chicken	ribs, bbq; chicken wings, bbq	Enteritidis.
69	CDC NORS	2007	Chicken	Not RTE frozen chicken pot pie	I 4,[5],12:i:-.
70	CDC NORS	2007	Chicken	chicken	Schwarzengrund.
71	CDC NORS	2007	Chicken	chicken, baked; chicken, grilled	Typhimurium.
72	CDC NORS	2008	Chicken	specialty/ethnic dishes	Enteritidis.
73	CDC NORS	2008	Chicken	chicken, roasted	Typhimurium.
74	CDC NORS	2008	Chicken	chicken, other	Typhimurium.
75	CDC NORS	2008	Chicken	chicken, unspecified	Typhimurium.
76	CDC NORS	2009	Chicken	chicken	Heidelberg.
77	CDC NORS	2009	Chicken	chicken	Heidelberg.
78	FSIS/NORS	2009	Chicken	Stuffed chicken	1 4,[5], 12:i-.
79	CDC NORS	2009	Chicken	chicken	Typhimurium.
80	CDC NORS	2010	Chicken	Cheesy Chicken and Rice frozen meals (frozen entrée).	Chester.
81	CDC NORS	2010	Chicken	chicken and rice	Enteritidis.
82	CDC NORS	2010	Chicken	chicken salad	Enteritidis.
83	CDC NORS	2010	Chicken	chicken	Heidelberg.
84	CDC NORS	2010	Chicken	chicken, baked	Typhimurium var Cope.
85	CDC NORS	2011	Chicken	chicken	Enteritidis.
86	CDC NORS	2011	Chicken	chicken picata	Enteritidis.
87	CDC NORS	2011	Chicken	chicken	Enteritidis.
88	CDC NORS	2011	Chicken	Kosher Broiled Chicken Livers	Heidelberg.
89	CDC NORS	2011	Chicken	chicken, other	Montevideo.
90	CDC NORS	2011	Chicken	chicken	Typhimurium var Cope.
91	CDC NORS	2012	Chicken	chicken	Enteritidis.
92	CDC NORS	2012	Chicken	fajita, chicken	Enteritidis.
93	CDC NORS	2012	Chicken	chicken	Heidelberg.
94	CDC NORS	2012	Chicken	chicken, baked	Javiana.
95	CDC NORS	2012	Chicken	chicken	Newport.
96	CDC NORS	2012	Chicken	chicken	Schwarzengrund.
97	CDC NORS	2012	Chicken	chicken	Unsubtyped.
98	FSIS/NORS	2013	Chicken	Stuffed chicken	Enteritidis.
99	CDC NORS	2013	Chicken	chicken	Enteritidis.
100	CDC NORS	2013	Chicken	ground chicken	Enteritidis.
101	CDC SNORS	2013	Chicken	Mechanically Separated Chicken	Heidelberg.
102	CDC NORS	2013	Chicken	chicken	Heidelberg.
103	CDC NORS	2013	Chicken	chicken mole	Heidelberg.
104	CDC SNORS	2013	Chicken	chicken products	Heidelberg.
105	CDC NORS	2013	Chicken	chicken	Javiana.
106	CDC NORS	2013	Chicken	chicken, bbq	Montevideo.
107	CDC NORS	2014	Chicken	chicken	Carmel.
108	CDC NORS	2014	Chicken	chicken	Enteritidis.
109	CDC NORS	2014	Chicken	chicken	Enteritidis.
110	CDC NORS	2014	Chicken	chicken, casserole	Enteritidis.
111	FSIS/NORS	2014	Chicken	stuffed chicken (chicken kiev)	Enteritidis.
112	CDC NORS	2014	Chicken	chicken liver pate	Enteritidis.
113	CDC NORS	2014	Chicken	chicken	Enteritidis; Enteritidis.
114	CDC NORS	2014	Chicken	chicken, smoked	Heidelberg.

Running total	Data source	Year	Poultry type	Product	Subtype
115	CDC NORS	2014	Chicken	chicken, grilled	Heidelberg.
116	CDC NORS	2014	Chicken	chicken	Infantis.
117	CDC NORS	2014	Chicken	chicken, smoked	Thompson.
118	CDC NORS	2014	Chicken	sandwich, chicken	Thompson.
119	CDC NORS	2015	Chicken	chicken, rotisserie	Braenderup.
120	CDC NORS	2015	Chicken	chicken, rotisserie	Derby.
121	CDC NORS	2015	Chicken	Stuffed chicken	Enteritidis.
122	CDC NORS	2015	Chicken	chicken tenders	Enteritidis.
123	FSIS/NORS	2015	Chicken	frozen, raw, stuffed and breaded chicken.	Enteritidis.
124	FSIS/NORS	2015	Chicken	chicken Kiev, cordon bleu,	Enteritidis.
125	CDC NORS	2015	Chicken	chicken, grilled; chicken, blackened.	Enteritidis.
126	CDC NORS	2015	Chicken	chicken and waffles	Enteritidis.
127	CDC NORS	2015	Chicken	chicken katsu plate; korean chicken.	Muenchen.
128	CDC NORS	2015	Chicken	chicken, roasted	Unsubtyped.
129	FSIS/NORS	2016	Chicken	Stuffed chicken	Enteritidis.
130	CDC NORS	2016	Chicken	pate, chicken liver	Enteritidis.
131	CDC NORS	2016	Chicken	chicken, baked	Enteritidis; Enteritidis; Enteritidis.
132	CDC NORS	2016	Chicken	chicken	Heidelberg.
133	CDC NORS	2016	Chicken	rotisserie chicken salad from Costco's Alderwood store.	I 4,[5],12:i:-.
134	CDC NORS	2016	Chicken	chicken	Muenchen.
135	CDC NORS	2016	Chicken	chicken	Norwich.
136	CDC NORS	2016	Chicken	chicken	Saintpaul.
137	CDC NORS	2016	Chicken	chicken	Thompson.
138	CDC NORS	2016	Chicken	chicken	Unsubtyped.
139	CDC NORS	2017	Chicken	sandwich, chicken	Anatum.
140	CDC NORS	2017	Chicken	chicken	Enteritidis.
141	CDC NORS	2017	Chicken	chicken	Enteritidis.
142	CDC NORS	2017	Chicken	chicken dishes	Enteritidis.
143	CDC NORS	2017	Chicken	kabobs, chicken	Enteritidis.
144	CDC NORS	2017	Chicken	chicken salad sandwich; grilled chicken salad; chicken caesar salad.	Enteritidis.
145	CDC NORS	2017	Chicken	chicken	Enteritidis.
146	CDC NORS	2017	Chicken	chicken	Enteritidis.
147	CDC NORS	2017	Chicken	chicken, pulled	Heidelberg.
148	CDC NORS	2017	Chicken	chicken	I 4,[5],12:i:-.
149	CDC NORS	2017	Chicken	chicken, smoked	Infantis.
150	CDC NORS	2018	Chicken	chicken, raw	Blockley.
151	CDC NORS	2018	Chicken	chicken	Blockley.
152	CDC NORS	2018	Chicken	chicken, grilled	Braenderup.
153	CDC NORS	2018	Chicken	chicken	Enteritidis.
154	FSIS/NORS	2018	Chicken	raw breaded chicken	Enteritidis.
155	CDC NORS	2018	Chicken	chicken, smoked	Enteritidis.
156	CDC NORS	2018	Chicken	smoked chicken	Enteritidis.
157	CDC NORS	2018	Chicken	chicken, other	Enteritidis.
158	CDC NORS	2018	Chicken	chicken	Enteritidis; Thompson.
159	CDC NORS	2018	Chicken	chicken, raw	Heidelberg.
160	CDC NORS	2018	Chicken	kosher chicken	I 4,[5],12:i:-.
161	CDC NORS	2018	Chicken	chicken	Paratyphi B.
162	CDC NORS	2018	Chicken	chicken salad	Typhimurium.
163	CDC NORS	2018	Chicken	chicken	Typhimurium.
164	CDC NORS	2019	Chicken	chicken	Braenderup.
165	CDC NORS	2019	Chicken	chicken	Enteritidis.
166	CDC NORS	2019	Chicken	chicken	Enteritidis.
167	CDC NORS	2019	Chicken	chicken	Enteritidis.
168	CDC NORS	2019	Chicken	chicken fingers	Enteritidis.
169	CDC NORS	2019	Chicken	chicken	Enteritidis.
170	CDC NORS	2019	Chicken	chicken	Enteritidis.
171	CDC NORS	2019	Chicken	mechanically separated chicken ...	Enteritidis; Infantis.
172	CDC NORS	2019	Chicken	chicken	Heidelberg.
173	CDCNORS	2019	Chicken	chicken products	Infantis.
174	CDC NORS	2019	Chicken	chicken	Infantis.
175	CDC NORS	2019	Chicken	chicken	Thompson.
176	CDC NORS	2020	Chicken	chicken	Enteritidis.
177	CDC NORS	2020	Chicken	chicken	Enteritidis.
178	CDC NORS	2020	Chicken	chicken	Enteritidis.

[FR Doc. 2023–09043 Filed 4–27–23; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Child and Adult Care Food Program (CACFP) National Disqualified List

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is an extension, without change, of a currently approved collection for maintaining the National Disqualified List of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program (CACFP) participation. These federal requirements affect eligibility under the CACFP. The State Agencies are required to enter data as institutions and individuals become disqualified from participating in the CACFP.

DATES: Written comments must be received on or before June 27, 2023.

ADDRESSES: Comments may be sent to: Jessica Saracino, Director, Program Monitoring and Operational Support Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA, 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Suzanne Diggs at (703) 305–3223.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Child and Adult Care Food Program (CACFP) National Disqualified List.

Form Number: FNS–843 and FNS–844.

OMB Number: 0584–0584.

Expiration Date: July 31, 2023.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: The Food and Nutrition Service administers the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). Section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, amended section 17(d)(5) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766 (d)(5)(E)(i) and (ii)) by requiring the Department of Agriculture to maintain a list of institutions, day care home providers, and individuals that have been terminated or otherwise disqualified from Child and Adult Care Food Program participation. The law also requires the Department to make the list available to State agencies for their use in reviewing applications to participate in the program and to sponsoring organizations to ensure that they do not employ as principals any persons who are disqualified from the program. Forms FNS–843 Report of Disqualification from Participation—Institutions and Responsible Principals/Individuals and FNS–844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider are used to collect and maintain this data via a FNS web-based system constructed to update and maintain the list of disqualified institutions and individuals so that no State agency or sponsoring organization may approve any entity on the National Disqualified List to ensure the integrity of the Program. This statutory mandate has been incorporated into § 226.6(c)(7) of the Program regulations. In addition, the recordkeeping burden associated with maintaining documentation related to institutions and providers terminated for cause at the State agency level is captured under the Information Collection for the CACFP, OMB Control Number 0584–0055 Child and Adult Care Food Program (CACFP), expiration date August 31, 2025. Therefore, there is no recordkeeping burden associated with this collection.

Affected Public: State, Local, and Tribal Government. State Agencies are the respondents.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 28.

Estimated Total Annual Responses: 1,568.

Estimate Time per Response: 0.50.

Estimated Total Annual Burden: 784.

Affected public	Instrument	Estimated number of respondents	Number of responses per respondent	Total annual responses	Estimated total hours per response	Estimated total burden
Reporting						
State Agencies	FNS 843	56	6	336	.50	168
State Agencies	FNS 844	56	22	1,232	.50	616
Total Estimated Reporting Burden		56	28	1,568	0.50	784

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023–09029 Filed 4–27–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Publish for Public Comment Proposed Permanent Recreational Shooting Orders in the Boulder, Clear Creek, Canyon Lakes, and Sulphur Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), United States Department of Agriculture, is giving notice of its intent to publish for public comment a proposed permanent order prohibiting recreational shooting on approximately 94,900 acres of National Forest System lands in the Canyon Lakes, Sulphur, and Clear Creek Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, and a proposed permanent order prohibiting recreational shooting on approximately 46,195 acres of National Forest System lands in the Clear Creek and Boulder Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland. At the end of the advance notice period, the Forest Service will seek public comments, as specified in this notice, on the proposed permanent recreational shooting orders.

DATES: Advance notice of the opportunity to provide public comment on the proposed permanent recreational shooting orders is being provided until May 5, 2023. Beginning on May 5, 2023, the Forest Service will accept comments on the proposed permanent recreational shooting orders for 60 days. The notice of opportunity for public comment will be posted on the Arapaho and Roosevelt National Forests and Pawnee National Grassland web page at *www.fs.usda.gov/goto/arp/recshootingmgt.*

ADDRESSES: The proposed permanent recreational shooting orders, maps, and justification for the proposed permanent orders are posted on the Forest Service's Regulations and Policies web page at *www.fs.usda.gov/about-agency/regulations-policies.*

FOR FURTHER INFORMATION CONTACT: Doug Leyva, Recreation, Engineering, Lands, and Minerals Staff Officer, 970–295- 6650 or *douglas.leyva@usda.gov.* Individuals who use telecommunications devices for the hearing-impaired may call the Federal Relay Service at 800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Advance Notice and Public Comment Procedures

Section 4103 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, Title IV (Sportsmen's Access and Related Matters)), hereinafter ''the Dingell Act,'' requires the Forest Service to provide advance notice and opportunity for public comment before temporarily or permanently closing any National Forest System (NFS) lands to hunting, fishing, or recreational shooting. Section 4103 of the Dingell Act applies to the proposed permanent order prohibiting recreational shooting in the northern Canyon Lakes, Sulphur, and southern Clear Creek Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, and to the proposed permanent order prohibiting recreational shooting in the northern Clear Creek and southern Boulder Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland. The public notice and comment process in section 4103(b)(2) of the Dingell Act requires the Forest Service to publish a notice of intent in the **Federal Register** of the proposed permanent orders in advance of the public comment period for the proposed permanent orders. This notice meets the requirement to publish a notice of intent in the **Federal Register** in advance of the public comment period.

Following the notice of intent, section 4103(b)(2) of the Dingell Act requires an opportunity for public comment on proposed temporary or permanent hunting, fishing, or recreational shooting orders. Because the proposed orders would permanently prohibit recreational shooting in the southern Boulder, northern Canyon Lakes, Sulphur, and Clear Creek Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, the public comment period must be at least 60 days. Beginning on May 5, 2023, the Forest Service will accept public comments on the proposed permanent orders for 60 days. The notice of opportunity for public comment will be posted on the Arapaho and Roosevelt National Forests and Pawnee National Grassland's web page at *www.fs.usda.gov/goto/arp/recshootingmgt.*

Section 4103(b)(2) of the Dingell Act requires the Forest Service to respond to public comments received on the proposed permanent orders before issuing final permanent orders, including an explanation of how any significant issues raised by the comments were resolved and, if applicable, how resolution of those issues affected the proposed permanent orders or the justification for the proposed permanent orders. The final permanent orders, maps, justification for the final permanent orders, and response to comments on the proposed permanent orders will be posted on the Arapaho and Roosevelt National Forests and Pawnee National Grassland's web page at *www.fs.usda.gov/goto/arp/recshootingmgt.*

Background and Need

The proposed permanent orders would implement applicable land management plan direction in the Arapaho and Roosevelt National Forests and Pawnee National Grassland's 2019 Land and Resource Management Plan amendment (Plan Amendment). Shooting sports are long-standing and appropriate uses of NFS lands. The Plan Amendment direction includes a management goal of providing for recreational shooting opportunities across the Arapaho and Roosevelt National Forests in a manner that addresses public health and safety concerns. The Plan Amendment also identifies NFS lands unsuitable for recreational shooting. Consistent with the Plan Amendment, the proposed permanent orders would prohibit recreational shooting, defined as discharging a firearm, air rifle or gas gun, on 94,900 acres of NFS lands designated as unsuitable for recreational shooting in southern Clear Creek, Jefferson, Park, northern Larimer, and Grand Counties, Colorado, which include the northern Canyon Lakes, Sulphur, and southern Clear Creek Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland, and on 46,195 acres of NFS lands designated as unsuitable for recreational shooting in northern Clear Creek and Gilpin Counties, Colorado, which include the southern Boulder and northern Clear Creek Ranger Districts of the Arapaho and Roosevelt National Forests and Pawnee National Grassland.

Implementation of the proposed permanent orders is consistent with the framework in the decision notice for the Plan Amendment for phasing out

recreational shooting as developed target ranges are constructed and opened for public use in the Arapaho and Roosevelt National Forests and Pawnee National Grassland. Final permanent recreational shooting orders will be issued after the notice and comment process under the Dingell Act is complete and developed target ranges in the Arapaho and Roosevelt National Forests and Pawnee National Grassland are constructed and open for public use.

The proposed permanent orders, maps, and justification for the proposed permanent orders are posted on the Forest Service's Regulations and Policies web page at *www.fs.usda.gov/about-agency/regulations-policies.*

Dated: April 17, 2023.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2023–08763 Filed 4–27–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Household Pulse Survey

On February 14, 2023, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct Phase 3.8 of the Household Pulse Survey (OMB No. 0607–1013, Exp. 10/31/23). The Household Pulse Survey was designed to meet a need for timely information associated with household experiences during the Covid–19 pandemic. The Department is committed to ensuring that the data collected by the Household Pulse Survey continue to meet information needs as they may evolve over the course of the pandemic. This notice serves to inform of the Department's intent to request clearance from OMB to make some revisions to the Household Pulse Survey questionnaire. To ensure that the data collected by the Household Pulse Survey continue to meet information needs as they evolve over the course of the pandemic, the Census Bureau submits this Request for Revision to an Existing Collection for a revised Phase 3.9 questionnaire.

Phase 3.9 includes an experiment involving new detailed race and ethnicity questions, as well as new questions on the use of antivirals to treat COVID, how households obtain COVID tests, the use of infant formula with babies, children's mental health treatment, and pressure to move from current residence. There are also modifications to existing children's vaccine booster, COVID testing, infant formula, reasons not working, unemployment insurance, Medicaid, and inflation items. Several questions will be removed for Phase 3.9, including replacing the current race/ethnicity items, and questions about the receipt of updated COVID vaccines, intent to vaccinate children, childcare arrangements, children's mental health and behaviors, current rent amount, use of emergency rental assistance, and how children receive their education.

It is the Department's intention to commence data collection using the revised instrument on or about December 7, 2022. The Department 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. Public comments were previously sought on the Household Pulse Survey via the **Federal Register** on May 19, 2020, June 3, 2020, February 1, 2021, April 13, 2021, June 24, 2021, October 26, 2021, January 24, 2022, April 18, 2022, July 2, 2022, and November 10, 2022. This notice allows for an additional 30 days for public comments on the proposed revisions.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Household Pulse Survey.

OMB Control Number: 0607–1013.

Form Number(s): None.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 141,552.

Average Hours per Response: 20 minutes.

Burden Hours: 46,712.

Needs and Uses: Data produced by the Household Pulse Survey are designed to inform on a range of topics related to households' experiences during the COVID–19 pandemic. Topics to date have included employment, facility to telework, travel patterns, income loss, spending patterns, food and housing security, amount of monthly rent and changes in monthly rent, access to benefits, mental health and access to care, difficulty with self-care and communicating, intent to receive the COVID–19 vaccine/booster, timing of coronavirus testing, use of coronavirus treatments, the experience of long COVID, post-secondary educational disruption, access to infant formula, the effects of increasing prices, natural disasters, school meals for children, and children's mental health treatment. The requested revision, if approved by OMB, will remove selected items from the questions for which utility has declined and add questions based on information needs expressed via public comment and in consult with other Federal agencies. The overall burden change to the public will be insignificant.

The Household Pulse Survey was initially launched in April, 2020 as an experimental project (see *https://www.census.gov/data/experimental-data-products.html*) under emergency clearance from the Office of Management and Budget (OMB) initially granted April 19, 2020; regular clearance was subsequently sought and approved by OMB on October 30, 2020 (OMB No. 0607–1013; Exp. 10/30/2023).

Affected Public: Households.

Frequency: Households will be selected once to participate in a 20-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, sections 8(b), 182 and 193.

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 0607–1013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–08953 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; SelectUSA Client Intake Survey

AGENCY: International Trade Administration, SelectUSA, 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 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments via email to *FDIResearch@trade.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Leo Kim at (202) 989–5979 or *leo.kim@trade.gov* or *FDIResearch@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

SelectUSA, within the International Trade Administration, provides programs and services that focus on facilitating job-creating business investment into the United States and raising awareness of the critical role that economic development plays in the U.S. economy. These programs include information products, services, and trade events to potential foreign investors into the United States and to U.S.-based economic development organizations. To accomplish its mission effectively, SelectUSA requires detailed information from clients in order to provide resources and services that meet each specific client's needs. This information collection item allows ITA to solicit clients' interest for the use of ITA products, services, and trade events. To promote optimal use and effective response to client needs through ITA services and programs, we are requesting approval for this clearance package. Upon approval by OMB, ITA will use the approved information collection to collect client input by the use of multiple data collection methods, including Comment Cards (*i.e.,* transactional-based surveys), web-enabled surveys sent via email, telephone interviews, automated telephone surveys, and in-person surveys via mobile devices/laptops/tablets at trade events/shows. The use of these multiple data collection methods is suggested solely to reduce the public burden in responding to requests for input. Without this information, ITA is unable to systematically determine the actual and relative levels of user needs for its programs and products/services and to provide clear, actionable insights for client use. This information will be used for strategic planning, allocation of resources, and stakeholder reporting.

II. Method of Collection

The International Trade Administration is seeking approval for the following data collection methods to provide flexibility in conducting customer intake surveys and to reduce the burden on respondents: (1) an email message delivering a hot link to a web enabled survey with an email reminder sent if the client does not respond to the survey within two weeks; (2) a telephone survey/interview; and (3) a web-enabled survey conducted in-person at trade shows/events via a laptop, tablet or mobile phone so participants can immediately respond without having to provide their email address.

III. Data

OMB Control Number: 0625–XXXX.

Form Number(s): None.

Type of Review: New information collection.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Total Annual Cost to Public: $50,000.

Respondent's Obligation: Voluntary.

Legal Authority: Public Law 15 U.S.C. *et seq.* and 15 U.S.C. 171 *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 for Economic Affairs, Commerce Department.

[FR Doc. 2023–08954 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet on Tuesday, June 13, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time.

DATES: The VCAT will meet on Tuesday, June 13, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held at the National Cybersecurity Center of Excellence, 9700 Great Seneca Highway, Rockville, Maryland, 20850 with an option to participate via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 240–446–6000. Ms. Shaw's email address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act,

as amended, 5 U.S.C. 1001 *et seq.*, notice is hereby given that the VCAT will meet on Tuesday, June 13, 2023, from 8:30 a.m. to 5:00 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST. It will also include discussions on the NIST budget and administration priorities, an update on the NIST Safety Culture, and next steps for each of the three subcommittees: Subcommittee on Alignment of Manufacturing Efforts, Subcommittee on Visibility Improvement, and Subcommittee on Workforce Development Efforts, based on their previous recommendations to NIST. The agenda is subject to change if needed to accommodate Committee business. The final agenda will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda by no later than 5:00 p.m. Eastern Time, Tuesday, June 6, 2023 by contacting Stephanie Shaw at *stephanie.shaw@nist.gov.* Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but, is likely to be about 3 minutes each. The exact time and date for public comments will be included in the final agenda that will be posted on the NIST website at *http://www.nist.gov/director/vcat/agenda.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person or via webinar are invited to submit written statements to Stephanie Shaw at *stephanie.shaw@nist.gov.*

For participants attending via webinar, please contact Ms. Shaw at *stephanie.shaw@nist.gov* for detailed instructions on how to join the webinar by 5:00 p.m. Eastern Time, Tuesday, June 6, 2023. For participants wishing to attend in person, please submit your name, time of arrival, email address, and phone number to Stephanie Shaw, *stephanie.shaw@nist.gov* by 5:00 p.m. Eastern Time, Tuesday, June 6, 2023. For detailed information please contact Ms. Shaw at *stephanie.shaw@nist.gov.*

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–08975 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2020

AGENCY: Office of Response and Restoration (ORR), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of indirect cost rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2020.

SUMMARY: NOAA's Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2020. The indirect cost rates for this fiscal year and date of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP website at *www.darrp.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: LaTonya Burgess, Deputy Director, NOAA Office of Response and Restoration, by phone at 206–491–1369 or by email at *LaTonya.Burgess@noaa.gov.*

SUPPLEMENTARY INFORMATION: The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and to support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: ORR within the National Ocean Service; the Restoration Center within the National Marine Fisheries Service; and the Office of the General Counsel Natural Resources Section (GCNRS). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with Federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

The DARRP's Indirect Cost Effort

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611).

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second **Federal Register** notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with

Federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from ERT, Inc. (ERT), Freestone Environmental Services, Inc. (Freestone), and Genwest Systems, Inc. (Genwest) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ERT, Freestone, and Genwest provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. Subsequent notices have been published in the **Federal Register** as follows:

- FY 2002, published on October 6, 2003 (68 FR 57672)
- FY 2003, published on May 20, 2005 (70 FR 29280)
- FY 2004, published on March 16, 2006 (71 FR 13356)
- FY 2005, published on February 9, 2007 (72 FR 6221)
- FY 2006, published on June 3, 2008 (73 FR 31679)
- FY 2007 and FY 2008, published on November 16, 2009 (74 FR 58948)
- FY 2009 and FY 2010, published on October 20, 2011 (76 FR 65182)
- FY 2011, published on September 17, 2012 (77 FR 57074)
- FY 2012, published on August 29, 2013 (78 FR 53425)
- FY 2013, published on October 14, 2014 (79 FR 61617)
- FY 2014, published on December 17, 2015 (80 FR 78718)
- FY 2015, published on August 22, 2016 (81 FR 56580)

Empirical Concepts developed the DARRP indirect rates for FY 2016 through FY 2019. Empirical reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2016, 2017, 2018, and 2019 indirect cost rates. The **Federal Register** notice for these rates can be found at the following:

- FY 2016 and FY 2017, published on October 16, 2019 (84 FR 55283)
- FY 2018, published on August 5, 2020 (85 FR 47358)
- FY 2019, published on August 24, 2021 (86 FR 47300)

Empirical Concepts developed the DARRP indirect rates for FY 2020 and reaffirmed the Direct Labor Cost Base as the most appropriate indirect allocation for the development of the FY 2020 indirect cost rates.

The DARRP's Indirect Cost Rates and Policies

The DARRP will apply the indirect cost rates for FY 2020 as recommended by Empirical Concepts for each of the DARRP component organizations as provided in the following table:

DARRP component organization	FY 2020 indirect rate (%)
Office of Response and Restoration (ORR)	128.19
Restoration Center (RC)	77.13
General Counsel Natural Resources Section (GCNRS)	42.98

The FY 2020 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2019 and September 30, 2020 effective May 1, 2023. DARRP will use the FY 2020 indirect cost rates for future fiscal years, beginning with FY 2021, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

Scott Lundgren,

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–09008 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC909]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held Monday, May 15, 2023, from 10 a.m. to 2:30 p.m. and Wednesday, May 17, 2023, from 9 a.m. to 12 p.m.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The EWG presented a proposed workplan for the Fishery Ecosystem Plan Ecosystem and Climate Information Initiative (Initiative 4), which the Council endorsed. Under this initiative, in the near term the EWG will develop risk tables and related methodologies to integrate ecosystem and climate information into Council decision-making on harvest specifications for petrale sole and possibly other species. In addition to petrale sole, the Council also asked the EWG to consider development of related methodologies for sablefish, Pacific sardine, and Chinook salmon. The EWG will present draft risk tables and related methodologies to the Council at its September meeting. Risk tables are a structured approach to integrate ecosystem and climate information into the decision-making process. At its meeting the EWG will begin developing risk tables and related methodologies for selected species in consultation with members of the Council's Groundfish Management Team. The EWG also may discuss and begin planning potential initiative-related activities following the September Council meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this

document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–08972 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC951]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting; virtual only.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a half-day virtual only meeting of its Shrimp Advisory Panel (AP).

DATES: The meeting will convene Thursday, May 18, 2023, from 8:30 a.m. to 12 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will convene via webinar only. Registration and log-on information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the Shrimp AP meeting on the calendar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website, when possible).

Thursday, May 18, 2023; 8:30 a.m.–12 p.m. EDT (7:30 a.m.–11 a.m. CDT)

Meeting will begin with Adoption of Agenda and Scope of Work. The AP will hold a discussion on the National Marine Fishery Services' (NMFS) Draft Budget Proposal for Congressional Funds for *Shrimp* Vessel Position Data Reporting.

The AP will receive any public testimony.

Meeting Adjourns—

The meeting will be held via webinar only. You may register by visiting *www.gulfcouncil.org* and clicking on the Shrimp Advisory Panel meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take-action to address the emergency at least 5 working days prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, *kathy.pereira@gulfcouncil.org,* at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–08974 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC944]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat Protection and Ecosystem-Based Management Advisory Panel (Habitat AP) in Charleston, SC.

DATES: The Habitat AP will meet on Tuesday, May 16, 2023, from 1 p.m. until 4 p.m.; Wednesday, May 17, 2023, from 9 a.m. to 4 p.m.; and Thursday, May 18, 2023, from 9 a.m. to 12 p.m.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

Meeting address: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 571–1000.

The meeting is open to the public and will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: *https://safmc.net/advisory-council-meetings/.*

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Habitat AP meeting agenda includes the following: NOAA Fisheries South Atlantic Climate Vulnerability Assessment; NOAA Fisheries Habitat Conservation Division's Essential Fish Habitat (EFH) 5-Year Review including EFH Designation History and the EFH User Guide; Research Needs for EFH Review and Council Research Plan Update; review and input on revisions to the Council's Beach Dredge and Fill and Large-Scale Coastal Engineering Policy Statement; and an overview of the East Coast Climate Change Scenario Planning Initiative.

The AP will also receive updates on the following: Renewable Energy (Offshore Wind) Development in the South Atlantic; Development of a

revision to the Council's energy policy; progress on the South Atlantic Council's Habitat Blueprint; and an update from NOAA Fisheries Habitat Conservation Division on EFH consultations over the past year. The AP will develop recommendations for consideration by the Council's Habitat Protection and Ecosystem-Based Management Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–08973 Filed 4–27–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete product(s) from the procurement list that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: May 28, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–425–4088—Writing Pad, Self-Stick, Repositionable, Phone Message, Assorted Pastel, 4″ x 5″

Designated Source of Supply: Goodwill Vision Enterprises, Rochester, NY

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–09031 Filed 4–27–23; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds product(s) to the procurement list that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to procurement list:* May 28, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 2/25/2022, 3/4/2022, 3/18/2022, 3/25/2022, 4/8/2022, 4/15/2022, 5/27/2022 and 6/10/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping, or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 13155—Green Saver Crisper Insert, 2 Piece

Designated Source of Supply: Cincinnati Association for the Blind and Visually Impaired, Cincinnati, OH

Contracting Activity: Military Resale-Defense Commissary Agency

Distribution: C-List

NSN(s)—Product Name(s):
MR 10830—Leakproof Baking Mat, Includes Shipper 20830
MR 10833—Foldout Tool Flashlight, Includes Shipper 20833
MR 16800—6 in 1 Screwdriver
MR 16801—Flathead Screwdriver
MR 16802—Phillips Screwdriver
MR 16803—Needle Nose Pliers
MR 16804—Slip Joint Pliers
MR 16805—Adjustable Wrench, 6 Inches
MR 16806—Tape Measure
MR 16807—Tie Down Strap
MR 11508—Cat Teaser
MR 10826—Cordless Work Light, Includes Shipper 20826
MR 10852—Water Toy Tower, Includes Shipper 20852
MR 10840—Disney Marvel Toys, Includes Shipper 20840
MR 10836—Barbecue Grill Mat, Includes Shipper 20836
MR 10861—Soap Dispensing Sponge Holder, Includes Shipper 20861
MR 10860—Mosquito Repellent Spray, Includes Shipper 20860

Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC

Contracting Activity: Military Resale-Defense Commissary Agency

Distribution: C-List

NSN(s)—Product Name(s):
MR 16950—Assorted Safety Pins, 50 Piece
MR 16951—Thread Spool, Black and White, 2 Piece
MR 16952—Thread Spool, Black
MR 16953—Thread Spool, White
MR 16954—Fabric Glue, ¾ Ounce

MR 16955—Heavy Fabric Needles, 7 Piece
MR 16956—Iron-On Patches, 8 Piece
MR 16957—FixIt Tape Strips, 40 Piece
MR 16958—Fabric Scissors, 8.5″
MR 16959—Seam Ripper & Tape Measure
MR 16960—Sew Quick Threaded Needles, 13-Piece
MR 16961—Survival Sewing Kit, 64-Piece
MR 16962—Hook and Loop (HNL) Tape, 18″, Black
MR 16963—Hook and Loop (HNL) Tape, 18″, White

Designated Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Military Resale-Defense Commissary Agency
Distribution: C-List

NSN(s)—Product Name(s):
MR 13500—Garlic Press

Designated Source of Supply: Cincinnati Association for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency
Distribution: C-List

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2023–09032 Filed 4–27–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0072, Registration of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the extension of information collection requirements relating to registration under the Commodity Exchange Act, OMB Control No. 3038–0072 (Registration of Swap Dealers and Major Swap Participants).

DATES: Comments must be submitted on or before June 27, 2023.

ADDRESSES: You may submit comments, identified by ''Registration of Swap Dealers and Major Swap Participants,'' Collection Number 3038–0072, by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/*. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5445 or *ccummings@cftc.gov,* and refer to OMB Control No. 3038–0072.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below. 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.[1]

Title: Registration under the Commodity Exchange Act (OMB Control No. 3038–0072). This is a request for an extension of a currently approved information collection.

Abstract: The information collected under OMB Control No. 3038–0072 is gathered through the use of forms for registration of swap dealers and major swap participants. Swap dealers and major swap participants are required by Section 4s(a) of the Commodity Exchange Act (''CEA'') (7 U.S.C. 6s(a)) to register with the Commission. The CFTC uses various forms for registration (and withdrawal therefrom) (the ''Registration Forms''). OMB Control No. 3038–0072 applies to the Registration Forms for registration of swap dealers and major swap participants,[2] to the alternative method provided under Commission regulations to submission of a fingerprint card for foreign natural persons; and to the process for requesting cross-border comparability determinations for substituted compliance with requirements otherwise applicable to swap dealers and major swap participants.

With respect to the collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] Forms for registration of futures commission merchants, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, introducing brokers, associated persons, floor traders, and floor brokers are the subject of a separate information collection (OMB Control Number 3038–0023).

[3] 17 CFR 145.9.

or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission continues to estimate the burden for this collection as described below.

Respondents/Affected Entities: Users of Commission registration forms that are swap dealers and major swap participants.

Estimated Number of Respondents: 779.

Estimated Average Burden Hours per Respondent: 1.14 hours.

Estimated Total Annual Burden on Respondents: 888 hours.

Frequency of Responses: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 25, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–09057 Filed 4–27–23; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before May 30, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0116, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Lee McFarland, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5368; email: *lmcfarland@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Response to Notification of Termination of Exemptive Relief Issued Pursuant to Regulation 30.10 (OMB Control No. 3038–0116). This is a request for extension of a currently approved information collection.

Abstract: Commission regulation 30.10 provides a process by which persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they are located to seek an exemption from certain of the requirements under Part 30 of the Commission's regulations. Regulation 30.10 codifies the process by which the Commission may terminate such exemptive relief after appropriate notice and opportunity to respond. Regulation 30.10(c)(3) provides any party affected by the Commission's determination to terminate relief with the opportunity to respond to the notification in writing no later than 30 business days following the receipt of the notification, or at such time as the Commission permits in writing. These reporting requirements are necessary for the ongoing evaluation of the effectiveness of the Commission's program for regulatory deference.

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.[2] On February 17, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 10303 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is not revising its original estimate of the burden for this proposed renewal of collection. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 1.

Estimated Average Burden Hours per Respondent: 8.

Estimated Total Annual Burden Hours: 8.

Frequency of Collection: Once.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 25, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–09056 Filed 4–27–23; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

[2] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

DEPARTMENT OF EDUCATION

Applications for New Awards—American History and Civics Education National Activities Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the American History and Civics Education National Activities (AHC–NA) program, Assistance Listing Number 84.422B. This notice relates to the approved information collection under OMB 1894–0006.

DATES:

Applications Available: April 28, 2023.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to conduct informational webinars designed to provide technical assistance to interested applicants for grants under the AHC–NA program. These informational webinars will occur approximately 2 weeks after this notice is published in the **Federal Register**, with information available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/national-activities-grant/.*

Note: For potential grantees new or unfamiliar with grantmaking at the Department, please consult the resources on the Department's Grants web page: *www2.ed.gov/fund/grant/about/discretionary/index.html.*

Deadline for Notice of Intent to Apply: May 30, 2023.

Deadline for Transmittal of Applications: July 12, 2023.

Deadline for Intergovernmental Review: September 11, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Orman Feres, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5960. Telephone: 202–453–6921. Email: *Orman.Feres@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the AHC–NA program is to promote new and existing evidence-based strategies to encourage innovative American history, civics and government, and geography instruction, learning strategies, and professional development activities and programs for teachers, principals, or other school leaders, particularly such instruction, strategies, activities, and programs that benefit students from low-income backgrounds and other underserved populations.

Background: The AHC–NA program seeks to promote evidence-based approaches that encourage innovative American history and civics education. In particular, the program seeks to promote strategies, activities, and programs that benefit students from low-income backgrounds and other underserved populations. This program is authorized under section 2233 of the Elementary and Secondary Act of 1965, as amended (ESEA). The Department encourages applications to include strong partnerships and active collaboration between eligible entities, local educational agencies and State educational agencies (SEAs) in their design and proposed implementation. Project activities should reflect the best available research and practice in teaching and learning.

This competition includes one absolute priority, two competitive preference priorities, and one invitational priority. Consistent with section 2233 of the ESEA, the absolute priority addresses innovative instruction or professional development in American history, civics and government, and geography, and Competitive Preference Priority 1 encourages applicants to propose projects that incorporate the use of hands-on civic engagement activities for teachers and students or programs that educate students about the history and principles of the U.S. Constitution, including the Bill of Rights. Competitive Preference Priority 2, drawn from Supplemental Priorities and Definitions for Discretionary Programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2021, 86 FR 70612, encourages applicants to develop programs that promote equity in student access to educational resources and opportunities. This work may be accomplished by carefully examining and implementing responses to the sources of inequity or by establishing, expanding, or improving efforts intended to engage members of underserved communities in policy and practice.

The Department recognizes the negative impact that inadequate access to and the inequitable distribution of, resources have on the educational experience of students who represent traditionally underserved communities. Access to educational resources and opportunities such as rigorous coursework, and dual enrollment can have positive impacts on underserved students. A December 2020 brief from the National Center for Education Statistics at the Department's Institute of Education Sciences [1] revealed that a correlation exists between the percentage of students who qualify for free or reduced-price lunch in a school and the likelihood that those students will have access to dual enrollment opportunities. Specifically, the study showed that schools with a higher percentage of students who qualified for free or reduced-price lunch were less likely to offer dual enrollment than schools with a lower rate of participation in free or reduced-price lunch programs. Such examples of inadequate or inequitable access to educational resources can lead to the students from higher poverty schools having fewer opportunities for educational enrichment and a lower likelihood that they will have access to well-rounded coursework and high-quality college and career pathway programs. This could ultimately limit civic engagement in our democracy.

Effective civics education is a key component in the preservation of the Nation's democracy. Providing students with a strong foundation in information literacy skills is especially important in an age of digital media consumption. A 2019 survey conducted by Common Sense Media and Survey Monkey [2] revealed that teens are substantially more likely to obtain their news from information posted on social media platforms or shared by celebrities and influencers than from traditional media outlets. As a result, misinformation can

[1] *nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020125.*

[2] *https://www.commonsensemedia.org/about-us/news/press-releases/new-survey-reveals-teens-get-their-news-from-social-media-and-youtube.*

more easily spread, and effective civics education can help students distinguish fact from misinformation by providing them with the knowledge and skills to critically evaluate information and news and develop the skills necessary to meaningfully participate in our democracy.

Therefore, the invitational priority encourages applicants to foster critical thinking and promote student engagement in civics education through professional development and/or student-facing projects using media literacy, digital citizenship, or other activities designed to and promote student engagement in civics. The inclusion of this invitational priority reflects the congressional intent outlined in the 2023 Appropriations Committee Report directing the Department to provide grants that emphasize student engagement, promote civic participation, and cultivate media literacy. Consistent with the use of invitational priorities across grant competitions, applicants are not required to respond to the invitational priority, and applications that meet the invitational priority do not receive a preference or competitive advantage over other applications.

The Department fully recognizes and respects that curriculum decisions are made at the State and local levels, not by the Federal Government, and does not mandate, direct, or control curricula through this competition. Rather, the Department, through this competition, seeks to encourage efforts to implement more effective, student-centered teaching practices and professional development activities while promoting learning practices among students that reflect the diversity of identities, histories, contributions, and experiences to support enriched educational opportunity, equity, and success for all students.

Priorities: This notice contains one absolute priority, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priority is from section 2233(b)(1) of the ESEA, 20 U.S.C. 6663. Competitive Preference Priority 1 is from section 2233(b)(2) of the ESEA, and Competitive Preference Priority 2 is from the Supplemental Priorities.

Absolute Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Innovative Instruction or Professional Development in American History, Civics and Government, and Geography.

Under this priority, we provide funding to projects that are designed to develop, implement, expand, evaluate, and disseminate for voluntary use, innovative, evidence-based approaches or professional development programs in American history, civics and government, and geography. To meet this priority, a project must—

(a) Show potential to improve the quality of teaching of and student achievement in American history, civics and government, or geography, in elementary schools and secondary schools; and

(b) Demonstrate innovation, scalability, accountability, and a focus on underserved populations.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 12 points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Innovative Activities for Civic Engagement. (up to 5 points)

Under this priority, we provide funding to promote new and existing evidence-based strategies to encourage innovative civics and government learning strategies and professional development activities and programs for teachers, principals, or other school leaders, particularly such instruction, strategies, activities, and programs that benefit low-income students and underserved populations. To meet this priority, a project must include one or both of the following—

(a) Hands-on civic engagement activities for teachers and students; or

(b) Programs that educate students about the history and principles of the Constitution of the United States, including the Bill of Rights.

Competitive Preference Priority 2—Promoting Equity in Student Access to Educational Resources and Opportunities. (up to 7 points)

Under this priority, an applicant must demonstrate that the applicant proposes a project designed to promote educational equity and adequacy in resources and opportunity for underserved students in one or more of the following educational settings:

(i) Early learning programs.

(ii) Elementary school

(iii) Middle school.

(iv) High school.

(v) Career and technical education programs.

(vi) Out-of-school-time settings.

(vii) Alternative schools and programs.

(viii) Juvenile justice system or correctional facilities.

The project also must examine the sources of inequity and inadequacy and implement responses, and may include one or both of the following:

(i) Rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including civics programs that support students in understanding and engaging in American democratic practices (up to 3 points).

(ii) Establishing, expanding, or improving the engagement of underserved community members (including underserved students and families) in informing and making decisions that influence policy and practice at the school, district, or State level by elevating their voices, through their participation and their perspectives and providing them with access to opportunities for leadership (*e.g.,* establishing partnerships between civic student government programs and parent and caregiver leadership initiatives) (up to 4 points).

Invitational Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

This priority is:

Projects that describe how they will foster critical thinking and promote student engagement in civics education through professional development and/or student-facing projects using media literacy, digital citizenship, or other activities designed to support students in—

(a) Evaluating sources and evidence using standards of proof;

(b) Understanding their own biases when reviewing information, as well as uncovering and recognizing bias in primary and secondary sources;

(c) Synthesizing information into cogent communications; and

(d) Understanding how inaccurate information may be used to influence individuals and developing strategies to recognize accurate and inaccurate information.

Note: The National Association for Media Literacy Education defines media

literacy as ''the ability to access, analyze, evaluate, create, and act using all forms of communication.'' [3] For the purpose of this priority, digital citizenship means the safe, ethical, responsible, and informed use of technology. This concept encompasses a range of skills and literacies that can include internet safety, privacy and security, cyberbullying, online reputation management, communication skills, information literacy, and creative credit and copyright.

Definitions: The following definitions apply to this competition. The definition of ''evidence-based'' is from section 8101 of the ESEA. The definitions of ''demonstrates a rationale,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbooks'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''early learning,'' ''English learner,'' ''military- or veteran-connected student,'' and ''underserved student'' are from the Supplemental Priorities.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any Individuals with Disabilities Education Act (IDEA)-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based means an activity, strategy, or intervention that—

(i) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(A) Strong evidence from at least 1 well-designed and well-implemented experimental study;

(B) Moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or

(C) Promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(A) Demonstrates a rationale based on high quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(B) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC

[3] *https://namle.net/resources/media-literacy-defined.*

intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and sustained coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student performing significantly below grade level.

(o) A military- or veteran- connected student.

What Works Clearinghouse (WWC) Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides

and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbooks released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: Section 2233 of the ESEA, 20 U.S.C. 6663.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $18,975,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000–$1,000,000 per year.

Estimated Average Size of Awards: $650,000 per year.

Maximum Award: We will not make an award exceeding $1,000,000 to any applicant per 12-month budget period. The Department plans to fully fund awards made under this notice with FY 2023 funds.

Estimated Number of Awards: 25–30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months, with potential for renewal of up to an additional 24 months.

III. Eligibility Information

1. *Eligible Applicants:* An institution of higher education or other nonprofit or for-profit organization with demonstrated expertise in the development of evidence-based approaches with the potential to improve the quality of American history, civics and government, or geography learning and teaching.

Note: If multiple eligible entities wish to form a consortium and jointly submit a single application, they must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129.

2. a. *Cost Sharing or Matching:* This program does not require any cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 2301 of the ESEA, funds made available under this program must be used to supplement, and not supplant, other non-Federal funds that would otherwise be expended to carry out activities under this program.

c. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (84 FR 3768), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the AHC–NA program, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

6. *Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department of its intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for addressing each criterion is indicated in parentheses.

(a) *Quality of the project design.* (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale. (10 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (10 points)

(b) *Need for project.* (25 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project. (8 points)

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (7 points)

(iii) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (10 points)

(c) *Quality of the management plan.* (25 points)

(1) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (13 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (12 points)

(d) *Adequacy of resources.* (30 points)

(1) The Secretary considers the adequacy of resources for the proposed project. In determining the quality of the adequacy of resources, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (6 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (8 points)

(iii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* SEAs, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence. (8 points)

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (8 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with OMB's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an

objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license must extend only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established the following performance objective for the AHC–NA Program: Participants will demonstrate through pre- and post-assessments an increased understanding of American history, civics and government, and geography.

For purposes of Department reporting under 34 CFR 75.110, we will track performance on this objective through the following measure: The average percentage gain on an American History, Civics and Government, Geography and/or other related assessment after participation in the grant activities.

We advise an applicant for a grant under this program to give careful consideration to this measure in conceptualizing the approach to, and evaluation of, its proposed project. Each grantee will be required to provide, in its annual and final performance reports, data about its performance with respect to this measure.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; whether the grantee has met the required non-Federal cost share or matching requirement; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–08915 Filed 4–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0075]

Agency Information Collection Activities; Comment Request; Master Generic Plan for Customer Surveys and Focus Groups

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 27, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0075. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stephanie Valentine, (202) 453–7061.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Master Generic Plan for Customer Surveys and Focus Groups.

OMB Control Number: 1800–0011.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Annual Responses: 451,326.

Total Estimated Number of Annual Burden Hours: 115,344.

Abstract: Surveys to be considered under this generic will only include those surveys that improve customer service or collect feedback about a service provided to individuals or entities directly served by ED. The results of these customer surveys will help ED managers plan and implement program improvements and other customer satisfaction initiatives. Focus groups that will be considered under the generic clearance will assess customer satisfaction with a direct service or will be designed to inform a customer satisfaction survey ED is considering. Surveys that have the potential to influence policy will not be considered under this generic clearance.

Dated: April 24, 2023.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–09007 Filed 4–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards—American History and Civics Education—Presidential and Congressional Academies for American History and Civics

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for the Presidential and Congressional Academies for American History and Civics (Academies) Program, Assistance Listing Number 84.422A. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: April 28, 2023.

Date of Pre-Application Webinars: The Office of Elementary and Secondary Education intends to conduct informational webinars designed to provide technical assistance to interested applicants for grants under the Academies Program. These informational webinars occur approximately 2 weeks after the publication of this notice in the **Federal Register** at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/american-history-and-civics-academies.*

Note: For potential new grantees or for applicants unfamiliar with grantmaking at the Department, please consult the resources on the Department's Grants web page: *www2.ed.gov/fund/grant/about/discretionary/index.html.*

Deadline for Notice of Intent To Apply: May 30, 2023.

Deadline for Transmittal of Applications: July 12, 2023.

Deadline for Intergovernmental Review: September 11, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.govinfo.gov/content/pkg/FR-2022-12-07/pdf/2022-26554.pdf.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Orman Feres, U.S. Department of

Education, 400 Maryland Avenue SW, Washington, DC 20202–5960. Telephone: (202) 453–6921. Email: *Orman.Feres@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Academies Program supports the establishment of (1) Presidential Academies for the Teaching of American History and Civics that offer workshops for both veteran and new teachers to strengthen their knowledge of American history, civics, and government education (Presidential Academies); and (2) Congressional Academies for Students of American History and Civics that provide high school students opportunities to enrich their understanding of these subjects (Congressional Academies).

Background: The Academies Program supports projects to raise student achievement in American history and civics by improving teachers' and students' knowledge, understanding, and engagement with these subjects, including principles of the Constitution, through intensive workshops with scholars, master teachers, and curriculum experts. This program is authorized under section 2232 of the Elementary and Secondary Act of 1965, as amended (ESEA). The Department encourages applications to include strong partnerships and active, ongoing collaboration between eligible entities, local educational agencies (LEAs), and State educational agencies (SEAs) in their design and proposed implementation. Project activities should reflect the best available research and practice in teaching and learning.

This competition includes two absolute priorities, two competitive preference priorities, and one invitational priority. Consistent with section 2232 of the ESEA, the absolute priorities address professional development and instruction in American history and civics for teachers and students. Applicants are required to address both absolute priorities. Competitive Preference Priority 1, from section 2232(e)(4) of the ESEA, encourages applicants to develop programs using the resources from the National Park Service. Competitive Preference Priority 2, from the Final Priorities and Definitions—Supplemental Priorities and Definitions for Discretionary Programs (Supplemental Priorities), published in the **Federal Register** on December 10, 2021 (86 FR 70612), encourages applicants to develop programs that promote equity in student access to educational resources and opportunities. This work may be accomplished by carefully examining and implementing responses to the sources of inequity or by establishing, expanding, or improving efforts intended to engage members of underserved communities in policy and practice.

The Department recognizes the negative impact that inadequate access to, and the inequitable distribution of, resources have on the educational experience of underserved students. Access to educational resources and opportunities such as rigorous coursework and dual enrollment can have positive impacts on underserved students. For example, a December 2020 brief from the National Center for Education Statistics at the Department's Institute of Education Sciences [1] revealed that a correlation exists between the percentage of students who qualify for free or reduced-price lunch in a school and the likelihood that those students will have access to dual enrollment opportunities. Specifically, the study showed that schools with a higher percentage of students who were approved for free or reduced-price lunch were less likely to offer dual enrollment than schools with a lower rate of participation in free or reduced-price lunch programs. Such examples of inadequate or inequitable access to educational resources can lead to the students from higher poverty schools having fewer opportunities for educational enrichment, a lower likelihood that they will have access to high-quality early learning programs, well-rounded coursework, and high-quality college and career pathway programs. This could ultimately limit civic engagement in our democracy.

Effective civics education is a key component in the preservation of the Nation's democracy. Providing students with a strong foundation in information literacy skills is especially important in an age of digital media consumption. A 2019 survey conducted by Common Sense Media and Survey Monkey [2] revealed that teens are substantially more likely to obtain their news from information posted on social media platforms or shared by celebrities and influencers than from traditional media outlets. As a result, misinformation can more easily spread, and effective civics education can be an opportunity to help students distinguish fact from misinformation by providing them with the knowledge and skills to critically evaluate the materials they encounter and develop the skills necessary to meaningfully participate in our democracy.

Therefore, the invitational priority encourages applicants to foster critical thinking and promote student engagement in civics education through professional development and/or student-facing projects using media literacy, digital citizenship, or other activities designed to promote student engagement in civics education. Consistent with the use of invitational priorities across grant competitions, applicants are not required to respond to the invitational priority, and applications that meet the invitational priority do not receive a preference or competitive advantage over other applications.

The Department fully recognizes and respects that curriculum decisions are made at the State and local levels, not by the Federal Government, and does not mandate, direct, or control curricula through this competition. Rather, the Department, through this competition, seeks to encourage efforts to implement more effective, student-centered teaching practices and professional development activities while promoting learning practices among students that reflect the diversity of identities, histories, contributions, and experiences to support enriched educational opportunity, equity, and success for all students.

Priorities: This notice contains two absolute priorities, two competitive preference priorities, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 2232(e)(1) and 2232(f)(1) of the ESEA, 20 U.S.C. 6662. Competitive Preference Priority 1 is from section 2232(e)(4) of the ESEA and Competitive Preference Priority 2 is from the Supplemental Priorities.

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these priorities.

These priorities are:

Absolute Priority 1—Presidential Academies for the Teaching of American History and Civics.

[1] *nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2020125.*

[2] *https://www.commonsensemedia.org/about-us/news/press-releases/new-survey-reveals-teens-get-their-news-from-social-media-and-youtube.*

Under this priority, an applicant must propose to establish a Presidential Academy that offers a seminar or institute for teachers of American history and civics, which—

(a) Provides intensive professional development opportunities for teachers of American history and civics to strengthen such teachers' knowledge of the subjects of American history and civics;

(b) Is led by a team of primary scholars and core teachers who are accomplished in the field of American history and civics;

(c) Is conducted during the summer or other appropriate time; and

(d) Is of not less than 2 weeks and not more than 6 weeks in duration.

Absolute Priority 2—Congressional Academies for Students of American History and Civics.

Under this priority, an applicant must propose to establish a seminar or institute for outstanding students of American history and civics, which—

(a) Broadens and deepens such students' understanding of American history and civics;

(b) Is led by a team of primary scholars and core teachers who are accomplished in the field of American history and civics;

(c) Is conducted during the summer or other appropriate time; and

(d) Is of not less than 2 weeks and not more than 6 weeks in duration.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Using the Resources of the National Parks. (up to 3 points)

Applicants that propose to develop innovative and comprehensive programs using the resources of the National Parks, including, to the extent practicable, through coordination or alignment of activities with the National Park Service National Centennial Parks initiative.

Note: The Department recognizes that the National Park Service Centennial occurred in 2016, and that consequently it may not be feasible to coordinate activities with this initiative. However, applicants can address this priority by proposing to develop innovative and comprehensive programs using other resources of the National Parks.

Competitive Preference Priority 2—Promoting Equity in Student Access to Educational Resources and Opportunities. (up to 7 points)

Under this priority, and applicant must demonstrate that the applicant proposes a project designed to promote educational equity and adequacy in resources and opportunity for underserved students—

(a) in one or more of the following educational settings:

(1) Early learning programs.

(2) Elementary school.

(3) Middle school.

(4) High school.

(5) Career and technical education programs.

(6) Out-of-schooltime settings.

(7) Alternative schools and programs.

(8) Juvenile justice system or correctional facilities.

(b) That examines the sources of inequity and inadequacy and implement responses, and that may include one or both of the following:

(1) Rigorous, engaging, and well-rounded (*e.g.,* that include music and the arts) approaches to learning that are inclusive with regard to race, ethnicity, culture, language, and disability status and prepare students for college, career, and civic life, including civics programs that support students in understanding and engaging in American democratic practices (up to 3 points).

(2) Establishing, expanding, or improving the engagement of underserved community members (including underserved students and families) in informing and making decisions that influence policy and practice at the school, district, or State level by elevating their voices, through their participation and their perspectives and providing them with access to opportunities for leadership (*e.g.,* establishing partnerships between civic student government programs and parent and caregiver leadership initiatives) (up to 4 points).

Invitational Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Projects that describe how they will foster critical thinking and promote student engagement in civics education through professional development and/or student-facing projects involving media literacy, digital citizenship, or other activities designed to support students in—

(a) Evaluating sources and evidence using standards of proof;

(b) Understanding their own biases when reviewing information, as well as uncovering and recognizing bias in primary and secondary sources;

(c) Synthesizing information into cogent communications; and

(d) Understanding how inaccurate information may be used to influence individuals and developing strategies to recognize accurate and inaccurate information.

Note: The National Association for Media Literacy Education defines media literacy as ''the ability to access, analyze, evaluate, create, and act using all forms of communication.'' [3] For the purpose of this invitational priority, digital citizenship means the safe, ethical, responsible, and informed use of technology. This concept encompasses a range of skills and literacies that can include internet safety, privacy and security, cyberbullying, online reputation management, communication skills, information literacy, and creative credit and copyright.

Definitions: The definitions of ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcome'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''early learning,'' ''English learner,'' ''military- or veteran-connected student,'' and ''underserved student'' are from the Supplemental Priorities.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202) (B)).

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Early learning means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not

[3] *https://namle.net/resources/media-literacy-defined.*

limited to, any program operated by a child care center or in a family child care home; (b) program funded by the Federal Government or State or local educational agencies (including any Individuals with Disabilities Education Act (IDEA)-funded program); (c) Early Head Start and Head Start program; (d) non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting; and (e) other program that may deliver early learning and development services in a child's home, such as the Maternal, Infant, and Early Childhood Home Visiting Program; Early Head Start; and Part C of IDEA.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in postsecondary education or career and technical education, and adult learners, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student performing significantly below grade level.

(o) A military- or veteran-connected student.

Application Requirements: The following requirements are from sections 2232(e)(2), 2232(e)(3), 2232(f)(2) and 2232(f)(3) of the ESEA and apply to all applications submitted under this competition:

(a) *Selection of teachers.* Each year, each Presidential Academy shall select between 50 and 300 teachers of American history and civics from public or private elementary schools and secondary schools to attend the seminar or institute.

(b) *Teacher stipends.* Each teacher selected to participate in a seminar or institute under this competition shall be awarded a fixed stipend based on the length of the seminar or institute to ensure that participants do not incur personal costs associated with the teacher's participation in the seminar or institute.

(c) *Selection of students.* Each year, each Congressional Academy shall select between 100 and 300 eligible students to attend the seminar or institute under this competition.

(d) *Eligible students.* A student shall be eligible to attend a seminar or institute offered by a Congressional Academy under this competition if the student—

(i) Is recommended by the student's secondary school principal or other school leader to attend the seminar or institute; and

(ii) Will be a secondary school junior or senior in the academic year following attendance at the seminar or institute.

(e) *Student stipends.* Each student selected to participate in a seminar or institute under this competition shall be awarded a fixed stipend based on the length of the seminar or institute to ensure that such student does not incur personal costs associated with the student's participation in the seminar or institute.

Program Authority: Section 2232 of the ESEA (20 U.S.C. 6662).

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,975,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$1,000,000 per year.

Estimated Average Size of Awards: $650,000 per year.

Estimated Number of Awards: 3–5.

Maximum Award: We will not make an award exceeding $1,000,000 to any applicant per 12-month budget period.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An institution of higher education or nonprofit educational organization, museum, library, or research center with demonstrated expertise in historical methodology or the teaching of American history and civics; or a consortium of these entities.

In its application, an applicant must submit documentation of its organization's demonstrated expertise in historical methodology or the teaching of American history or civics.

Note: Consortium applicants must follow the procedures for group applications described in 34 CFR 75.127 through 34 CFR 75.129.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* Under section 2232(g)(1) of the ESEA, each grant recipient must provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or through in-kind contributions, to carry out the activities supported by the grant. To meet this requirement, grantees must provide matching contributions on an annual basis relative to the amount of Academies Program funds received for a fiscal year.

Under section 2232(g)(2) of the ESEA, the Secretary may waive the matching requirement for any fiscal year for a grantee if the Secretary determines that applying the matching requirement would result in serious hardship or an inability to carry out project activities. Applicants that wish to apply for a waiver for one or more fiscal years may include a request in their application that describes how the 100 percent matching requirement would cause serious hardship or an inability to carry out project activities.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 2301 of the ESEA, funds made available under this program must be used to supplement, and not supplant, other non-Federal funds that would otherwise be expended to carry out activities under this program.

c. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (84 FR 3768), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Academies competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define "business information" and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because, consistent with previous Academies competitions, we plan to post on our website the application narrative sections of all Academies grants, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under "Other Attachments Form," please list the page number or numbers on which we can find this information.

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* We specify unallowable costs in 2 CFR 200, subpart E. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the

recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. An applicant may earn up to a total of 100 points based on the selection criteria. The maximum score for addressing each criterion is indicated in parentheses.

(a) *Quality of the project design.* (20 points)

(1) The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale. (10 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (10 points)

(b) *Need for project.* (25 points)

(1) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project. (8 points)

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (7 points)

(iii) The extent to which the services to be provided by the proposed project are focused on those with greatest needs. (10 points)

(c) *Quality of the management plan.* (25 points)

(1) The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (13 points)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (12 points)

(d) *Adequacy of resources.* (30 points)

(1) The Secretary considers the adequacy of resources for the proposed project. In determining the quality of the adequacy of resources, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (6 points)

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (8 points)

(iii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multiyear financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* SEAs, LEAs, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence. (8 points)

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (8 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with OMB's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video

surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, we have established the following performance objective for the Academies Program:

Participants will demonstrate through pre- and post-assessments an increased understanding of American history and civics that can be linked to their participation in the Presidential or Congressional Academy.

For purposes of Department reporting under 34 CFR 75.110, we will track performance on this objective through the following measures:

Presidential Academies: The average percentage gain on an assessment after participation in the Presidential Academy.

Congressional Academies: The average percentage gain on an assessment after participation in the Congressional Academy.

We advise applicants for grants under this program to give careful consideration to these measures in conceptualizing the approach and evaluation of a proposed project. Each grantee will be required to provide, in its annual and final performance reports, data about its performance with respect to these measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Senior Advisor, Office of the Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office Elementary and Secondary Education.

[FR Doc. 2023–08914 Filed 4–27–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open virtual meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal

Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, May 18, 2023; 9:40 a.m. to 11:30 a.m. PDT

Friday, May 19, 2023; 9:10 a.m. to 12:25 p.m. PDT

ADDRESSES: Information to participate virtually can be found on the PCAST website closer to the meeting at: *www.whitehouse.gov/PCAST/meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Reba Bandyopadhyay, Designated Federal Officer, PCAST, email: *PCAST@ostp.eop.gov;* telephone: (202) 881–7163.

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST provides advice and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Reba Bandyopadhyay. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

Tentative Agenda: PCAST will discuss and consider for approval one or more reports from PCAST Sub-Committees. PCAST will hear from invited speakers on and discuss the impacts of Artificial Intelligence (AI) on Science and the impacts of AI on Society. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Public Participation: The meeting is open to the public. The meeting will be held virtually for members of the public. It is the policy of the PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on May 18, 2023, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on May 11, 2023. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on May 11, 2023, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Minutes: Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

Signed in Washington, DC, on April 25, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–09012 Filed 4–27–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–699–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel and LU Annual Update and OPS Report 2023 to be effective 6/1/2023.
Filed Date: 4/21/23.
Accession Number: 20230421–5196.
Comment Date: 5 p.m. ET 5/3/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/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: April 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09039 Filed 4–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–131–000.
Applicants: Big Elm Solar, LLC.
Description: Big Elm Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/24/23.
Accession Number: 20230424–5095.
Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: EG23–132–000.
Applicants: Angelo Storage, LLC.
Description: Angelo Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 4/24/23.
Accession Number: 20230424–5135.
Comment Date: 5 p.m. ET 5/15/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1873–017; ER16–1720–023; ER18–471–011; ER21–2137–007.
Applicants: IR Energy Management LLC, States Edge Wind I LLC, Invenergy Energy Management LLC, Buckeye Wind Energy LLC.
Description: Notice of Change in Status of Buckeye Wind Energy LLC, et al.
Filed Date: 4/21/23.
Accession Number: 20230421–5246.
Comment Date: 5 p.m. ET 5/12/23.

Docket Numbers: ER18–1667–008; ER18–2327–006; ER19–846–008; ER19–847–008; ER19–2527–003; ER20–1953–

001; ER20–1596–004; ER20–1597–004; ER20–1599–004; ER20–2065–003; ER20–2066–003; ER20–2519–002; ER21–2156–003; ER21–2289–002; ER21–2766–002.

Applicants: Central Line Solar, LLC, Clover Creek Solar, LLC, Antelope Expansion 1B, LLC, East Line Solar, LLC, Antelope Expansion 3B, LLC, Antelope Expansion 3A, LLC, Richmond Spider Solar, LLC, Pleinmont Solar 2, LLC, Pleinmont Solar 1, LLC, Highlander Solar Energy Station 1, LLC, Prevailing Wind Park, LLC, San Pablo Raceway, LLC, Antelope DSR 3, LLC, Riverhead Solar Farm, LLC, Antelope Expansion 2, LLC.

Description: Notice of Change in Status of Antelope Expansion 2, LLC, et al.

Filed Date: 4/19/23.

Accession Number: 20230419–5282.

Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER22–296–001.

Applicants: Jackson Generation, LLC.

Description: Notice of Change in Status of Jackson Generation, LLC.

Filed Date: 4/19/23.

Accession Number: 20230419–5281.

Comment Date: 5 p.m. ET 5/10/23.

Docket Numbers: ER23–317–002.

Applicants: Riverstart Solar Park LLC.

Description: Tariff Amendment: Response to Deficiency Letter Under Docket ER23–317 to be effective 11/2/2022.

Filed Date: 4/24/23.

Accession Number: 20230424–5195.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1263–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Notice of Cancellation, SA No. 5310; Queue No. AB2–174 in ER23–1467 to be effective 5/8/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5140.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1467–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Original NSA, SA No. 6857; Queue No. AC1–168, Docket No. ER23–1467 to be effective 5/28/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5153.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1691–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5754; Queue No. AF2–289 to be effective 6/23/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5031.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1692–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6874 and CSA, SA No. 6875; Queue No. AD2–086/AE1–090 to be effective 3/24/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5053.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1693–000.

Applicants: Lucky Corridor, LLC.

Description: Application for Renewed Negotiated Rate Authority of Lucky Corridor, LLC.

Filed Date: 4/20/23.

Accession Number: 20230420–5248.

Comment Date: 5 p.m. ET 5/11/23.

Docket Numbers: ER23–1694–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Tri-State Solar Project Second Amended and Restated LGIA Filing to be effective 4/12/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5107.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1695–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Tri-State Solar Project (Phase 2) Amended and Restated LGIA Filing to be effective 4/12/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5108.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1696–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 354 to be effective 4/18/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5137.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1697–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 19 to be effective 6/23/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5139.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1698–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 168 to be effective 6/23/2023.

Filed Date: 4/24/23.

Accession Number: 20230424–5146.

Comment Date: 5 p.m. ET 5/15/23.

Docket Numbers: ER23–1699–000.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2023–04–24 Petition for Limited Waiver—Meter Data to be effective N/A.

Filed Date: 4/24/23.

Accession Number: 20230424–5191.

Comment Date: 5 p.m. ET 5/15/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–42–000.

Applicants: GridLiance West LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of GridLiance West LLC.

Filed Date: 4/21/23.

Accession Number: 20230421–5249.

Comment Date: 5 p.m. ET 5/12/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–11–000.

Applicants: Spire Inc.

Description: Spire Inc. submits FERC 65–A Exemption Notification.

Filed Date: 4/21/23.

Accession Number: 20230421–5248.

Comment Date: 5 p.m. ET 5/12/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–872–000.

Applicants: Clarion Boards LLC.

Description: Form 556 of Clarion Boards LLC.

Filed Date: 4/24/23.

Accession Number: 20230424–5202.

Comment Date: 5 p.m. ET 5/15/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09040 Filed 4–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1922–052]

Ketchikan Public Utilities; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 1922–052.

c. *Date Filed:* October 27, 2022.

d. *Applicant:* Ketchikan Public Utilities (KPU).

e. *Name of Project:* Beaver Falls Hydroelectric Project (project).

f. *Location:* On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. The project currently occupies 478.4 acres of United States lands administered by U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jennifer Holstrom, Senior Project Engineer, Ketchikan Public Utilities, 1065 Fair Street, Ketchikan, Alaska 99901; (907) 228–4733; or email at *jenniferh@ktn-ak.us.*

i. *FERC Contact:* Kristen Sinclair at (202) 502–6587, or *kristen.sinclair@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* June 23, 2023.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Beaver Falls Hydroelectric Project (P–1922–052).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Beaver Falls Project consists of two developments: Silvis and Beaver Falls. The Silvis development consists of: (1) a 60-foot-high, 135-foot-long concrete-face, rock-filled Upper Silvis Lake dam; (2) an 800-foot-long excavated rock spillway channel leading from Upper Silvis Lake to Lower Silvis Lake; (3) a 300-acre reservoir (Upper Silvis Lake) with gross storage capacity of approximately 38,000 acre-feet; (4) a 980-foot-long underground power tunnel connecting to a 375-foot-long, 36-inch-diameter steel penstock that conveys water to the Silvis Powerhouse; (5) a 30-feet by 40-feet by 25-feet-high Silvis powerhouse containing a single Francis-type turbine with a rated capacity of 2.1 megawatts; (6) a 150-foot-long trapezoidal shaped channel tailrace discharging into Lower Silvis Lake; (7) a 2,900-foot-long, 5-kilovolt submarine cable beneath Lower Silvis Lake; (8) a 7,000-foot-long, 34.5-kilovolt aerial transmission line; and (9) appurtenant facilities.

The Beaver Falls development consists of: (1) a 32-foot-high, 140-foot-long concrete-face, rock-filled Lower Silvis dam; (2) a spillway with an ungated control weir and unlined rock discharge channel; (3) a 67.5-acre reservoir (Lower Silvis Lake) with gross storage capacity of approximately 8,052 acre-feet; (4) a 3-foot-high, 40-foot-long concrete diversion dam on Beaver Falls Creek; (5) a 3,800-foot-long underground power tunnel connecting to a 3,610-foot-long above ground steel penstock that conveys water from Lower Silvis Lake to the Beaver Falls powerhouse and supplies water to Units 3 and 4 in the powerhouse; (6) a 225-foot-long adit that taps the 3,800-foot-long underground power tunnel and discharges water into Beaver Falls Creek approximately 500-feet upstream of the Beaver Falls diversion dam; (7) a 4,170-foot-long above ground steel penstock that conveys water from the Beaver Falls Creek diversion dam to the Beaver Falls powerhouse and supplies Unit 1 in the powerhouse; (8) a 30-feet by 147-feet by 25-feet-high Beaver Falls powerhouse containing three horizontal Pelton generating units with a total installed capacity of 5 MW (Units 1, 3 and 4; Unit 2 is decommissioned); (9) a Beaver Falls substation; and (10) appurtenant facilities. The project generates an annual average of 54,711,280 megawatt-hours.

m. A copy of the application is available for review 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. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—May 2023
Comments on Scoping Document 1 Due—June 2023
Issue Scoping Document 2 (if necessary)—July 2023
Request Additional Information (if necessary)—July 2023
Issue Notice of Ready for Environmental Analysis—August 2023

Dated: April 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09028 Filed 4–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5867–054]

Alice Falls Hydro, LLC; Notice of Intent To Prepare an Environmental Assessment

On September 29, 2021, Alice Falls Hydro, LLC filed an application for a new major license for the 2.1-megawatt Alice Falls Hydroelectric Project (Alice Falls Project or project; FERC No. 5867). The Alice Falls Project is located on the Ausable River, in the Town of Chesterfield, Clinton and Essex counties, New York.

In accordance with the Commission's regulations, on February 16, 2023, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to license the Alice Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	December 2023.[1]
Comments on EA	January 2024.

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Alice Falls Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

Any questions regarding this notice may be directed to Nicholas Tackett at (202) 502–6783 or *nicholas.tackett@ferc.gov.*

Dated: April 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–09027 Filed 4–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL23–52–000]

MD Solar 2, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 24, 2023, the Commission issued an order in Docket No. EL23–52–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether MD Solar 2, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *MD Solar 2, LLC,* 183 FERC ¶ 61,053 (2023).

The refund effective date in Docket No. EL23–52–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL23–52–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

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 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 ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 24, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–09037 Filed 4–27–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Recommendation for the Western Area Power Administration's Rocky Mountain Region and Colorado River Storage Project Management Center To Pursue Final Negotiations Regarding Membership in the Southwest Power Pool Regional Transmission Organization, and for the Upper Great Plains Region To Expand Its Participation

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of recommendation to pursue final negotiations regarding SPP RTO membership.

SUMMARY: Western Area Power Administration (WAPA), a Power Marketing Administration of the Department of Energy (DOE), recommends the Rocky Mountain Region (WAPA–RM) with its Loveland Area Projects Transmission System and the Colorado River Storage Project Management Center (WAPA–CRSP) with its Colorado River Storage Project Transmission System pursue final negotiations regarding transmission

owning membership in the Southwest Power Pool (SPP) Regional Transmission Organization (RTO), and the Upper Great Plains Region (WAPA–UGP) with its Pick-Sloan Missouri Basin Project—Eastern Division facilities in the Western Interconnection expand its participation in SPP. WAPA is seeking public comments from its customers, Indian Tribes, and other stakeholders on the substance of the recommendation.

DATES: WAPA–RM, WAPA–CRSP, and WAPA–UGP will hold at least one virtual customer and stakeholder meeting to provide an overview of the recommendation to pursue final negotiations with SPP concerning membership and expansion of membership in SPP. Date(s) for the meetings will be posted on WAPA's website at: *www.wapa.gov/About/keytopics/Pages/southwest-power-pool-membership.aspx.*

To ensure consideration, all comments should be received by WAPA on or before 4:00 p.m.. Mountain Time June 12, 2023.

ADDRESSES: Send written comments via email to *SPP-Comments@wapa.gov* or via regular mail to Rebecca Johnson, Transmission and Power Markets Advisor, Western Area Power Administration, 12155 West Alameda Parkway, Lakewood, CO 80228–8213. Written comments must be received by the deadline identified above to be considered in WAPA's decision process and should include the following information:

1. Name and general description of the entity submitting the comment.
2. Name, telephone number, and email address of the entity's primary contact.
3. Identification of any specific recommendation the comment references.

FOR FURTHER INFORMATION CONTACT: Rebecca Johnson, Transmission and Power Markets Advisor at (720) 376–2400, email at *SPP-Comments@wapa.gov,* or regular mail at Western Area Power Administration, 12155 West Alameda Parkway, Lakewood, CO 80228–8213.

SUPPLEMENTARY INFORMATION: In October 2020, WAPA–RM and WAPA–UGP along with Tri-State Generation and Transmission Association, Basin Electric Power Cooperative, Municipal Energy Agency of Nebraska, and Deseret Power each executed non-binding Letters of Interest (LOI) to investigate membership or expanded participation in SPP. In April 2021, WAPA–CRSP executed a non-binding LOI. In May 2021, Colorado Springs Utilities executed a non-binding LOI. In August 2022, Platte River Power Authority executed a non-binding LOI.

The participating entities have completed transmission cost studies, adjusted production cost modeling, and various other analyses. After discussions among these entities, negotiations with SPP, and further analysis by WAPA subject matter experts, and pursuant to its authority under Section 1232(a)(l)(A) of the Energy Policy Act of 2005 (42 U.S.C. 16431), WAPA recommends WAPA–RM and WAPA–CRSP pursue final negotiations regarding membership in SPP, and WAPA–UGP expand its participation in SPP. WAPA will continue to work with our customers both inside and outside of the proposed RTO-West footprint to the greatest extent possible, and continuously monitor the evolution of markets and the operational changes as they develop. The background, basis for the recommendation, and explanatory material are posted on WAPA's website at: *www.wapa.gov/About/keytopics/Pages/southwest-power-pool-membership.aspx.*

WAPA–RM's membership would include SPP assuming the balancing authority responsibilities for the Western Area Colorado Missouri balancing authority area (BAA) that WAPA–RM operates today, as well as SPP operating a single SPP-West BAA.

In addition, WAPA–UGP, with its Pick-Sloan Missouri Basin Project—Eastern Division facilities in the Western Interconnection, would pursue final negotiations to expand its participation in the SPP RTO. WAPA–UGP's Western Interconnection transmission facilities are already under the SPP tariff and WAPA–UGP's Eastern Interconnection facilities are already in the SPP RTO and SPP's Integrated Marketplace. This recommendation includes SPP also assuming the balancing authority responsibilities for the Western Area Upper Great Plains West (WAUW) BAA that WAPA–UGP operates in the Western Interconnection today in a single SPP-West BAA, as well as SPP implementing its Integrated Marketplace across WAPA–UGP's facilities in the existing WAUW BAA footprint.

Through this process, WAPA is soliciting comments from its customers, Indian Tribes, and other stakeholders regarding its recommendation to pursue final negotiations. At the close of the comment period, WAPA will provide notification of its decision with a letter to stakeholders and by a posting to its website. Concurrent with this comment process, WAPA also will conduct a separate Tribal consultation.

If the decision is made by WAPA to move forward with final negotiations with SPP, and those negotiations are successful, WAPA–RM and WAPA–CRSP would then execute SPP membership agreements and WAPA–UGP would expand its participation in SPP.

Legal Authority

Any decision by WAPA to move forward with final negotiations with SPP will be consistent with WAPA–RM, WAPA–CRSP, and WAPA–UGP statutory requirements and as outlined in the explanatory material posted on WAPA's website. Section 1232(b) of the Energy Policy Act of 2005 authorizes the appropriate Federal regulatory authority to enter into a contract, agreement, or other arrangement transferring control and use of all or part of the transmission system of a Federal utility to a Transmission Organization (42 U.S.C. 16431(b)). By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy designated the Administrator of WAPA as the appropriate Federal regulatory authority with respect to all or part of WAPA's transmission system.

Availability of Information

The Recommendation Report and explanatory material to be presented at the public meeting(s), as well as other supporting documents, are available for review and comment on the website at: *www.wapa.gov/About/keytopics/Pages/southwest-power-pool-membership.aspx.* Comments received as part of this public process, along with WAPA's responses will be posted on the same website after the close of the comment period.

Environmental Compliance

WAPA has determined this action fits within the following categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021: B4.4 (Power Marketing Services and Activities). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.[1] A copy of the categorical exclusion determination is available on the website at: *www.wapa.gov/About/keytopics/Pages/southwest-power-pool-membership.aspx.*

[1] The determination was done in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Signing Authority

This document of the Department of Energy was signed on April 17, 2023, by Tracey A. LeBeau Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. This document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 25, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–09004 Filed 4–27–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–067]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 17, 2023 10 a.m. EST Through April 24, 2023 10 a.m. EST Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230057, Final, USFS, UT, Southern Monroe Mountain Allotments Livestock Grazing Authorization, Review Period Ends: 06/20/2023, Contact: Mike Elson 435–896–9233.

EIS No. 20230058, Draft, NRCS, GA, Draft Supplemental Watershed Plan & Environmental Impact Statement for Etowah River Watershed Dam No. 13–A, Comment Period Ends: 06/12/2023, Contact: Eric Harris 706–546–2217.

Dated: April 25, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–09022 Filed 4–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10770–01–R6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent for Cost Reimbursement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed CERCLA Section 122(h)(1) Settlement Agreement (''Proposed Agreement'') associated with the ITC Tank Fire Superfund Site in Deer Park, Harris County, Texas (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Intercontinental Terminals Company LLC (''Settling Party'') for EPA response costs at the Deer Park Superfund Site in Texas. The settlement is $5.25 million and was based on negotiations which concluded with the settling party agreeing to make partial payment for EPA response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be received on or before May 30, 2023.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Edwin Quinones at *quinones.edwin@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''ITC Tank Fire'' Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–03–23''. Persons without access to electronic mail may call Mr. Quinones at (214) 665–8035 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Edwin Quinones at EPA by phone (214) 665–8035 or email at: *quinones.edwin@epa.gov.*

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–09046 Filed 4–27–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10669–01–R6]

Comprehensive Environmental Response, Compensation, and Liability Act; Modified Proposed Administrative Settlement Agreement for Recovery of Response Costs; ''Delta Shipyard'' Superfund Site in Houma, Terrebonne Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of modified proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a modified proposed CERCLA Section 122(h)(1) Cashout Settlement Agreement for Ability to Pay Peripheral Parties (''Proposed Agreement'') associated with the ''Delta Shipyard'' Superfund Site in Houma, Terrebonne Parish, Louisiana (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The modified Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Dean Services West, LLC (''Settling Party'') for EPA response costs at the Delta Shipyard Superfund Site located in the Southeastern section of Houma, Louisiana. The modified settlement is $350,000.00 and was based

on an updated Ability to Pay Analysis, which concluded the settling party shall make payment for EPA response costs in 3 yearly installments. For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

DATES: Comments must be received on or before May 30, 2023.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Amy Salinas at *salinas.amy@epa.gov*. Comments must be submitted via electronic mail to this same email address and should reference the ''Delta Shipyard'' Superfund Site, Modified Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–03–19.'' Persons without access to electronic mail may call Ms. Salinas at (215) 665–8063 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Amy Salinas at EPA by phone (214) 665–8063 or email at: *salinas.amy@epa.gov*.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–09045 Filed 4–27–23; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, May 11, 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 Minutes for April 13, 2023
- Update on the Operations of the Office of Equal Employment Opportunity and Inclusion

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. 2023–09141 Filed 4–26–23; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the FDIC proposes to modify a current FDIC system of records notice titled FDIC–010, Investigative Files of the Office of Inspector General (OIG), by updating the categories of records in the system to include video and audio recordings; updating the categories of records in the system to include violations or potential violations of administrative or civil law within the FDIC OIG's jurisdiction; updating the system location to include secure sites and secure servers maintained by third-party service providers; and adding new routine uses to authorize sharing of information with complainants, witnesses, and subjects, and to the public and news media, in certain limited circumstances. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. We hereby publish this notice for comment on the proposed actions.

DATES: This action will become effective on April 28, 2023. The routine uses in this action will become effective on May 30, 2023, unless the FDIC makes changes based on comments received. Written comments should be submitted on or before May 30, 2023.

ADDRESSES: Interested parties are invited to submit written comments identified by Privacy Act Systems of Records (FDIC–010) by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow the instructions for submitting comments on the FDIC website.
- *Email: comments@fdic.gov.* Include ''Comments-SORN (FDIC–010)'' in the subject line of communication.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments: SORN (FDIC–010), Legal Division, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act (FOIA).

FOR FURTHER INFORMATION CONTACT: Shannon Dahn, Chief, Privacy Program, 703–516–5500, *privacy@fdic.gov;*

SUPPLEMENTARY INFORMATION: The Privacy Act, 5 U.S.C. 552a, at subsection (b)(3), requires each agency to publish, for public notice and comment, significant changes that the agency intends to make to a Privacy Act system of records. The ''Investigative Files of the Office of Inspector General, FDIC–010'' system of records is maintained for the purpose of documenting, tracking, reviewing and reporting on all phases of the FDIC Office of Inspector General's investigative and investigative-related litigation activities, and serves as a repository and source for information necessary to fulfill statutory reporting, access and disclosure requirements,

including those pertaining to the Inspector General (IG) Act.

The FDIC proposes to update the categories of records in the system to include video and audio recordings, which will facilitate the FDIC OIG's compliance with Executive Order (E.O.) 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,* issued May 25, 2022. Video and audio recordings of individuals may be captured by FDIC OIG criminal investigators wearing body cameras during the execution of search and arrest warrants, including during interviews with individuals that take place during investigative operations. The recordings will be used for gathering and preserving evidence in accord with E.O. 14074.

The FDIC also proposes to update the categories of records in the system to include violations or potential violations of administrative or civil law within the FDIC OIG's jurisdiction. This modification is to clarify that the system of records may include information about individuals that may be obtained in the course of the FDIC OIG investigating administrative and civil cases.

Additionally, the FDIC proposes updating the system location of the system to include secure sites and secure servers maintained by third-party service providers. This modification is being made in conjunction with the implementation of a solution to support FDIC OIG's compliance with E.O. 14074, as well as to support other solutions or processes that may require the support of third-party service providers.

The FDIC also proposes to update a routine use (7) indicating that the FDIC OIG may share information during the course of an investigation with subjects and/or respondents of an investigation, their representatives, or other persons or entities to the extent necessary to provide such persons with information and explanations concerning the results of an investigation or other inquiry arising from matters about which they were a subject and/or respondent.

Additionally, the FDIC proposes to add two new routine uses (8 and 9) indicating that information may be shared with complainants, witnesses, and subjects to the extent necessary to provide such persons with information and explanations concerning the results of the investigation or other inquiry arising from the matters about which they complained and/or with respect to which they were a victim or witness; and (9) indicating that information may be shared with an individual who has been interviewed or contacted pursuant to an investigation or other inquiry, to the extent that the FDIC OIG may provide copies of that individual's statements, testimony, or records produced by such individual.

Finally, the FDIC proposes to add two new routine uses (27 and 28) indicating that information about individuals may be shared with the news media and/or the public when such information has been disclosed publicly in court proceedings, and in rare instances when the community needs to be reassured that the appropriate law enforcement agency is investigating a matter, or where release of information is necessary to protect the public safety.

This notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This modified system will be included in the FDIC's inventory of record systems.

SYSTEM NAME AND NUMBER:

Investigative Files of the Office of Inspector General, FDIC–010.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FDIC Office of Inspector General (OIG), 3501 Fairfax Drive, Arlington, VA 22226. In addition, records are maintained in FDIC OIG field offices. FDIC OIG field office locations can be obtained by contacting the Assistant Inspector General for Investigations at said address. Original and duplicate systems may exist, in whole or in part, at secure sites and on secure servers maintained by third-party service providers for the FDIC OIG.

SYSTEM MANAGER(S):

Assistant Inspector General for Investigations, FDIC Office of Inspector General, 3501 Fairfax Drive, Arlington, VA 22226.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); the Inspector General Act of 1978, as amended (5 U.S.C. appendix).

PURPOSE(S) OF THE SYSTEM:

Pursuant to the Inspector General Act, the system is maintained for the purpose of documenting, tracking, reviewing and reporting on all phases of the FDIC Office of Inspector General's investigative and investigative-related litigation activities and serves as a repository and source for information necessary to fulfill statutory reporting, access and disclosure requirements, including those pertaining to the Inspector General Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FDIC employees and individuals involved in or associated with FDIC programs and operations, including contractors, subcontractors, vendors and other individuals, including members of the public, associated with investigative inquiries and investigative cases, including, but not limited to, witnesses, complainants, subjects and those contacting the FDIC OIG Hotline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative files, including memoranda, computer-generated background information, correspondence, including payroll records, call records, email records, electronic case management, forensic, and tracking files, FDIC OIG Hotline-related records, reports of investigations with related exhibits, statements, affidavits, records or other pertinent documents, reports from or to other law enforcement organizations, pertaining to violations or potential violations of criminal, civil, or administrative laws, fraud, waste, and abuse with respect to administration of FDIC programs and operations, and violations of employee and contractor Standards of Conduct as set forth in section 12(f) of the Federal Deposit Insurance Act (12 U.S.C. 1822(f)), 12 CFR parts 336, 366, and 5 CFR parts 2634, 2635, and 3201. Records in this system may contain personally identifiable information such as names, social security numbers, dates of birth and addresses. This system may also contain such information as employment history, bank account numbers and information, driver's licenses, educational records, criminal history, photographs, video and audio recordings, and other information of a personal nature provided or obtained in connection with an investigation.

RECORD SOURCE CATEGORIES:

Official records of the FDIC; current and former employees of the FDIC, other government employees, private individuals, vendors, contractors, subcontractors, witnesses and informants. Records in this system may have originated in other FDIC systems of records and subsequently been transferred to this system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be

disclosed outside the FDIC as a routine use as follows:

(1) To the appropriate Federal, State, local, foreign or international agency or authority which has responsibility for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order to assist such agency or authority in fulfilling these responsibilities when the record, either by itself or in combination with other information, indicates a violation or potential violation of law, or contract, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, alternative dispute resolution mediator or administrative tribunal (collectively referred to as the adjudicative bodies) in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings (collectively, the litigated proceedings) when the FDIC or FDIC OIG is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary in order for the adjudicatory bodies, or any of them, to perform their official functions in connection with the presentation of evidence relative to the litigated proceedings;

(3) To the FDIC's or another Federal agency's legal representative, including the U.S. Department of Justice or other retained counsel, when the FDIC, FDIC OIG or any employee thereof is a party to litigation or administrative proceeding or has a significant interest in the litigation or proceeding to assist those representatives by providing them with information or evidence for use in connection with such litigation or proceedings;

(4) To appropriate agencies, entities, and persons when (a) the FDIC suspects or has confirmed that there has been a breach of the system of records; (b) the FDIC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the FDIC (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 FDIC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(5) To another Federal agency or Federal entity, when the FDIC 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;

(6) To a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury;

(7) To the subjects and/or respondents of an investigation and their representatives during the course of an investigation and to any other person or entity that has or may have information relevant or pertinent to the investigation to the extent necessary to assist in the conduct of the investigation, or to the extent necessary to provide such persons with information and explanations concerning the results of an investigation or other inquiry arising from matters about which they were a subject and/or respondent;

(8) To complainants, victims, and/or witnesses to the extent necessary to provide such persons with information and explanations concerning the results of the investigation or other inquiry arising from the matters about which they complained and/or with respect to which they were a victim or witness;

(9) To an individual who has been interviewed or contacted pursuant to an investigation or other inquiry, to the extent that the FDIC OIG may provide copies of that individual's statements, testimony, or records produced by such individual;

(10) To third-party sources during the course of an investigation only such information as determined to be necessary and pertinent to the investigation in order to obtain information or assistance relating to an audit, trial, hearing, or any other authorized activity of the FDIC OIG;

(11) To a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the records pertain;

(12) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for the FDIC to obtain information concerning the hiring or retention of an employee, a security clearance determination or adjudication, the letting of a contract, or the issuance of a license, grant, or other benefit;

(13) To a Federal agency responsible for considering suspension or debarment action where such record is determined to be necessary and relevant to that agency's consideration of such action;

(14) To a consultant, person or entity who contracts or subcontracts with the FDIC or FDIC OIG, to the extent necessary for the performance of the contract or subcontract. The recipient of the records shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(15) To contractors, grantees, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or project for the FDIC OIG, the FDIC or the Federal Government in order to assist those entities or individuals in carrying out their obligation under the related contract, grant, agreement or project;

(16) To the U.S. Office of Personnel Management, Government Accountability Office, Office of Government Ethics, Merit Systems Protection Board, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, Office of Management and Budget or the Federal Labor Relations Authority of records or portions thereof determined to be relevant and necessary to carrying out their authorized functions, including but not limited to a request made in connection with hiring or retaining an employee, rendering advice requested by FDIC OIG, making a security clearance determination or adjudication, reporting an investigation of an employee, reporting an investigation of prohibited personnel practices, letting a contract or issuing a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter;

(17) To appropriate Federal, State, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(18) To appropriate Federal, State, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(19) To officials of a labor organization when relevant and necessary to their duties of exclusive

representation concerning personnel policies, practices, and matters affecting working conditions;

(20) To a financial institution affected by enforcement activities or reported criminal activities authorities to ascertain the knowledge of or involvement in matters that have been developed during the course of the investigation;

(21) To the Internal Revenue Service and appropriate State and local taxing authorities for their use in enforcing the relevant revenue and taxation law and related official duties;

(22) To other Federal, State or foreign financial institutions, supervisory or regulatory authorities for their use in administering their official functions, to include examination, supervision, litigation, and resolution authorities with respect to financial institutions, receiverships, liquidations, conservatorships, bridge institutions, and similar functions;

(23) To appropriate Federal agencies and other public authorities for use in records management inspections;

(24) To a governmental, public or professional or self-regulatory licensing organization for use in licensing or related determinations when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(25) To the Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the FDIC or to obtain information in the course of an investigation (to the extent permitted by law). Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt;

(26) To other Federal Offices of Inspector General or other entities for the purpose of conducting quality assessments or peer reviews of the FDIC OIG, or its investigative components, or for statistical purposes;

(27) To the news media and/or the public when such information has been publicly disclosed in court proceedings, subject to limitations imposed by law or court rule or order; and,

(28) To the news media and/or the public when the Inspector General determines that the community needs to be reassured that the appropriate law enforcement agency is investigating a matter, or where release of information is necessary to protect the public safety, and that disclosure would not constitute an unwarranted invasion of personal privacy.

Disclosure to Consumer Reporting Agencies: Pursuant to 5 U.S.C. 552a (b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media and in paper format within individual file folders.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed and may be retrieved by a variety of fields, including but not limited to, name of individual, unique investigation number assigned, referral number, social security number, or investigative subject matter.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained as follows and then dispositioned in accordance with approved records retention schedules. Records regarding "significant" investigations (*i.e.,* those receiving national media attention, involving a Congressional investigation, or otherwise having been deemed to have historic value) are retained permanently. For records that are investigative in nature but not related to a specific investigation, the retention period is five years. For records related to a specific investigation, except significant investigations (national media attention, Congressional investigation, or substantive changes in agency policies and procedures), the retention period is ten years after the Office of Investigations' closure of the file.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FDIC and FDIC OIG have imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the records in this system is limited to those individuals who have completed mandatory privacy and security training and have a need to know the information for the performance of their official duties. FDIC and FDIC OIG have also implemented policies and procedures to safeguard the records. This includes maintaining files in secured facilities and restricting access to records to individuals who have appropriate role based permissions.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest or request an amendment to their records in this system of records must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must specify the information being contested, the reasons for contesting it, and the proposed amendment to such information in accordance with FDIC regulations at 12 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals wishing to know whether this system contains information about them must submit their request in writing to the FDIC FOIA & Privacy Act Group, 550 17th Street NW, Washington, DC 20429, or email *efoia@fdic.gov.* Requests must include full name, address, and verification of identity in accordance with FDIC regulations at 12 CFR part 310.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G) and (H); (e)(5); (e)(8); (e)(12); (f); (g); and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of investigatory material compiled: (A) for other law enforcement purposes (except where an individual has been denied any right, privilege, or benefit for which he or she would otherwise be entitled to or eligible for under Federal law, so long as the disclosure of such information would not reveal the identity of a source who furnished information to the FDIC under an express promise that his or her identity would be kept confidential); or

(B) solely for purposes of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the FDIC on a confidential basis, has been exempted from the requirements of subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), respectively. Note, records in this system that originated in another system of records shall be governed by the exemptions claimed for this system as well as any additional exemptions claimed for the other system.

HISTORY:

84 FR 35184 (July 22, 2019).

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 24, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–09017 Filed 4–27–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than May 15, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Frederick and Ruth Schwertfeger Irrevocable Trust of 2019, Wauwatosa, Wisconsin; Frederick C. Schwertfeger, Elm Grove, Wisconsin, and Alexandra G. Solanki, Wauwatosa, Wisconsin, as co-trustees*; to join the Schwertfeger Family Control Group, a group acting in concert, to retain voting shares of Sword Financial Corporation, and thereby indirectly retain voting shares of Horicon Bank, both of Horicon, Wisconsin, and Cornerstone Community Bank, Grafton, Wisconsin.

Additionally, *Alexandra G. Solanki, as co-trustee, of the Horicon Bank Profit Sharing and Employee Stock Ownership Plan (ESOP), Horicon, Wisconsin*; to acquire voting shares of Sword Financial Corporation, and thereby indirectly acquire voting shares of Horicon Bank and Cornerstone Community Bank. The ESOP owns Sword Financial Corporation.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–09047 Filed 4–27–23; 8:45 am]

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FINANCIAL STABILITY OVERSIGHT COUNCIL

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response

AGENCY: Financial Stability Oversight Council.

ACTION: Proposed analytic framework; request for public comment.

SUMMARY: The Financial Stability Oversight Council (Council) is proposing to adopt an analytic framework that describes the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.

DATES: *Comment due date:* June 27, 2023.

ADDRESSES: You may submit comments by either of the following methods. All submissions must refer to the document title and RIN 4030–[XXXX].

Electronic Submission of Comments: You may submit comments electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Send comments to Financial Stability Oversight Council, Attn: Eric Froman, 1500 Pennsylvania Avenue NW, Room 2308, Washington, DC 20220.

All properly submitted comments will be available for inspection and downloading at *https://www.regulations.gov.*

In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; Devin Mauney, Office of the General Counsel, Treasury, at (202) 622–2537; or Carol Rodrigues, Office of the General Counsel, Treasury, at (202) 622–6127.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') established the Financial Stability Oversight Council (Council), and section 112 sets forth its duties and purposes, which include identifying risks to U.S. financial stability and responding to emerging threats to the stability of the U.S. financial system.[1]

The proposed Analytic Framework for Financial Stability Risk Identification, Assessment, and Response (Proposed Analytic Framework) describes the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability. The Proposed Analytic Framework is not a binding rule,[2] and does not establish rights or

[1] 12 U.S.C. 5321 & 5322.

[2] In a rule codified at 12 CFR 1310.3, the Council voluntarily committed that it would not amend or rescind certain interpretive guidance regarding nonbank financial company determinations set forth in Appendix A to 12 CFR part 1310 without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553. Section 1310.3 does not apply to the Council's issuance of rules, guidance, procedures, or other documents that do not amend or rescind

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obligations applicable to any person or entity, but is intended to help market participants, stakeholders, and other members of the public better understand how the Council expects to perform certain of its duties.

II. Questions for Public Comment

The Council seeks public comment on any aspect of the Proposed Analytic Framework, including the following questions:

1. Will the Proposed Analytic Framework enable the Council to achieve its statutory purposes and perform its statutory duties? Should the Proposed Analytic Framework address additional topics? Are there topics the Proposed Analytic Framework addresses but should not?

2. The Proposed Analytic Framework states that financial stability can be defined as the financial system being resilient to events or conditions that could impair its ability to support economic activity, such as by intermediating financial transactions, facilitating payments, allocating resources, and managing risks. Are there other definitions of ''financial stability'' the Council should consider?

3. The Council's monitoring for potential risks to financial stability may cover an expansive range of asset classes, institutions, and activities, some of which are noted in the Proposed Analytic Framework. Are there asset classes, institutions, and activities not listed in the Proposed Analytic Framework the Council should monitor for potential risks to financial stability?

4. The Proposed Analytic Framework lists certain vulnerabilities that most commonly contribute to risk to financial stability: leverage; liquidity risk and maturity mismatch; interconnections; operational risks; complexity and opacity; inadequate risk management; concentration; and destabilizing activities. Are the Council's descriptions of these vulnerabilities appropriate? Should the Proposed Analytic Framework address additional vulnerabilities?

5. The Proposed Analytic Framework also provides sample metrics associated with the listed vulnerabilities. Are the proposed sample metrics appropriate for the purposes described in the Proposed Analytic Framework? Are there additional sample metrics that the Proposed Analytic Framework should incorporate?

6. The Council has identified four channels as most likely to facilitate the transmission of the negative effects of a risk to financial stability: exposures; asset liquidation; critical function or service; and contagion. Do the transmission channels listed in the Proposed Analytic Framework capture the most likely ways in which the negative effects of a risk to financial stability could be transmitted to other firms or markets? Should the Council consider additional transmission channels?

7. With respect to the vulnerabilities and transmission channels identified in the Proposed Analytic Framework, are there potential interactions between or among these vulnerabilities and transmission channels that the Proposed Analytic Framework should address?

III. Legal Authority

The Council has numerous authorities and tools under the Dodd-Frank Act to carry out its statutory purposes.[3] As the agency charged by Congress with broad-ranging responsibilities under the Dodd-Frank Act, the Council has the inherent authority to promulgate interpretive guidance that explains the approach the Council expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.[4] The Council also has authority to issue policy statements.[5] The Proposed Analytic Framework describes how the Council intends to exercise its discretionary authority. The Proposed Analytic Framework does not have binding effect; does not impose duties on, or alter the rights or interests of, any person; and does not change the statutory conditions or standards for the Council's actions.

IV. Executive Orders 12866, 13563, 14094

Executive Orders 12866, 13563, and 14094 direct certain agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Pursuant to section 3(f) of Executive Order 12866, the Office of Information and Regulatory Affairs within the Office of Management and Budget has determined that the Proposed Analytic Framework is not a ''significant regulatory action.''

Financial Stability Oversight Council

Analytic Framework for Financial Stability Risk Identification, Assessment, and Response

I. Introduction

This document describes the approach the Financial Stability Oversight Council (Council) expects to take in identifying, assessing, and responding to certain potential risks to U.S. financial stability.

The Council's practices set forth in this document are among the methods the Council uses to satisfy its statutory purposes: (1) to identify risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (2) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the government will shield them from losses in the event of failure; and (3) to respond to emerging threats to the stability of the U.S. financial system.[6] The Council's specific statutory duties include monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability and identifying gaps in regulation that could pose risks to U.S. financial stability, among others.[7]

Financial stability can be defined as the financial system being resilient to events or conditions that could impair its ability to support economic activity, such as by intermediating financial transactions, facilitating payments, allocating resources, and managing risks. Adverse events, or shocks, can arise from within the financial system or from external sources. Vulnerabilities in the financial system can amplify the impact of a shock, potentially leading to substantial disruptions in the provision of financial services. The Council seeks

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Appendix A, and accordingly, it does not apply to the Proposed Analytic Framework. Nonetheless, in the interest of transparency and accountability, the Council has chosen to publish its Proposed Analytic Framework and provide an opportunity for public comment.

[3] See, for example, Dodd-Frank Act sections 112(a)(2), 113, 115, 120, 804, 12 U.S.C. 5322(a)(2), 5323, 5325, 5330, 5463.

[4] Courts have recognized that ''an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion.'' See, for example, *Production Tool* v. *Employment & Training Administration,* 688 F.2d 1161, 1166 (7th Cir. 1982). The Supreme Court has acknowledged that ''whether or not they enjoy any express delegation of authority on a particular question, agencies charged with applying a statute necessarily make all sorts of interpretive choices.'' See *U.S.* v. *Mead,* 533 U.S. 218, 227 (2001).

[5] See *Association of Flight Attendants-CWA, AFL–CIO* v. *Huerta,* 785 F.3d 710 (D.C. Cir. 2015).

[6] Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) section 112(a)(1), 12 U.S.C. 5322(a)(1).

[7] Dodd-Frank Act section 112(a)(2), 12 U.S.C. 5322(a)(2).

to identify and respond to risks to financial stability that could impair the financial system's ability to perform its functions to a degree that could harm the economy. Risks to financial stability can arise from widely conducted activities or from the activities of individual entities, and from long-term vulnerabilities or from sources that are new or evolving.

This document describes the Council's analytic framework for identifying, assessing, and responding to potential risks to financial stability. The Council seeks to reduce the risk of a shock arising from within the financial system, to improve resilience against shocks that could affect the financial system, and to mitigate financial vulnerabilities that may increase risks to financial stability. The actions the Council may take depend on the nature of the vulnerability; for example, vulnerabilities originating from activities that may be widely conducted in a particular sector or market over which a regulator has adequate existing authority may be addressed through an activity-based or industry-wide response; in contrast, in cases where the financial system relies on the ongoing financial activities of a small number of entities, such that the impairment of one of the entities could threaten financial stability, or where a particular financial company's material financial distress or activities could pose a threat to financial stability, an entity-based action may be appropriate. The Council's authorities, some of which are described in section II.c, are complementary, and the Council may select one or more of those authorities to address a particular risk.

Among the many lessons of financial crises are that risks to financial stability can be diverse and build up over time, dislocations in financial markets and failures of financial companies can be sudden and unpredictable, and regulatory gaps can breed risk. The Council was created in the aftermath of the 2007–2009 financial crisis and is statutorily responsible for identifying and pre-emptively acting to address potential risks to financial stability. Many of the same factors, such as leverage, liquidity risk, and operational risk, regularly recur in different forms and under different conditions to generate risks to financial stability. At the same time, the U.S. financial system is large, diverse, and continually evolving, so the Council's analytic methodologies adapt to address evolving developments and risks.

This document is not a binding rule, but is intended to help market participants, stakeholders, and other members of the public better understand how the Council expects to perform certain of its duties. The Council may consider factors relevant to the assessment of a potential risk or threat to U.S. financial stability on a case-by-case basis, subject to applicable statutory requirements. The Council's annual reports describe the Council's work in implementing its responsibilities.

II. Identifying, Assessing, and Addressing Potential Risks to Financial Stability

a. Identifying Potential Risks

To enable the Council to identify potential risks to U.S. financial stability, the Council, in consultation with relevant U.S. and foreign financial regulatory agencies, monitors financial markets, entities, and market developments to identify potential risks to U.S. financial stability.

In light of the Council's broad statutory mandate, the Council's monitoring for potential risks to financial stability may cover an expansive range of asset classes, institutions, and activities, such as:

- markets for debt, loans, short-term funds, equity securities, commodities, digital assets, derivatives, and other institutional and consumer financial products and services;
- central counterparties and payment, clearing, and settlement activities;
- financial entities, including banking organizations, broker-dealers, asset managers, investment companies, insurance companies, mortgage originators and servicers, and specialty finance companies;
- new or evolving financial products and practices; and
- developments affecting the resiliency of the financial system, such as cybersecurity and climate-related financial risks.

Sectors and activities that may impact U.S. financial stability are often described in the Council's annual reports. The Council reviews information such as historical data, research regarding the behavior of financial markets and financial market participants, and new developments that arise in evolving marketplaces. The Council relies on data, research, and analysis including information from Council member agencies, the Office of Financial Research, primary financial regulatory agencies, industry participants, and other sources.[8]

[8] See Dodd-Frank Act section 112(d)(3), 12 U.S.C. 5322(d)(3).

b. Assessing Potential Risks

The Council works with relevant financial regulatory agencies[9] to evaluate potential risks to financial stability to determine whether they merit further review or action. The evaluation of any potential risk to financial stability will be highly fact-specific, but the Council has identified certain vulnerabilities that most commonly contribute to such risks. The Council has also identified certain sample quantitative metrics that are commonly used to measure these vulnerabilities, although the Council may assess each of these vulnerabilities using a variety of quantitative and qualitative factors. The following list is not exhaustive, but is indicative of the vulnerabilities and metrics the Council expects to consider.

- *Leverage.* Leverage can amplify risks by reducing market participants' ability to satisfy their obligations and by increasing the potential for sudden liquidity strains. Leverage can arise from debt, derivatives, off-balance sheet obligations, and other arrangements. Leverage can arise broadly within a market or at a limited number of firms in a market. Metrics relevant for assessing leverage may include ratios of assets, risk-weighted assets, debt, derivatives liabilities or exposures, and off-balance sheet obligations to equity.
- *Liquidity risk and maturity mismatch.* A shortfall of sufficient liquidity to satisfy short-term needs, or reliance on short-term liabilities to finance longer-term assets, can subject market participants to rollover or refinancing risk. These risks may force entities to sell assets rapidly at stressed market prices, which can contribute to broader stresses. Relevant metrics may include the ratio of short-term debt to unencumbered short-term high-quality liquid assets, and amounts of funding available to meet unexpected reductions in available short-term funding.
- *Interconnections.* Direct or indirect financial interconnections, such as exposures of creditors, counterparties, investors, and borrowers, can increase the potential negative effect of dislocations or financial distress. Relevant metrics may include total assets, off-balance-sheet assets or liabilities, total debt, derivatives exposures, values of securities financing transactions, and the size of potential requirements to post margin or

[9] References in this document to ''relevant financial regulatory agencies'' may encompass a broader range of regulators than those included in the statutory definition of ''primary financial regulatory agency'' under Dodd-Frank Act section 2(12), 12 U.S.C. 5301(12).

collateral. Metrics related to the concentration of holdings of a class of financial assets may also be relevant.

• *Operational risks.* Risks can arise from the impairment or failure of financial market infrastructures, processes, or systems, including due to cybersecurity vulnerabilities. Relevant metrics may include statistics on cybersecurity incidents or the scale of critical infrastructure.

• *Complexity or opacity.* A risk may be exacerbated if a market, activity, or firm is complex or opaque, such as if financial transactions occur outside of regulated sectors or if the structure and operations of market participants cannot readily be determined. In addition, risks may be aggravated by the complexity of the legal structure of market participants and their activities; unavailability of data due to lack of regulatory or public disclosure requirements and by obstacles to the rapid and orderly resolution of market participants. Factors that generally increase the risks associated with complexity or opacity may include a large size or scope of activities, a complex legal or operational structure, activities or entities subject to the jurisdiction of multiple regulators, and complex funding structures. Relevant metrics may include the number of jurisdictions in which activities are conducted, and numbers of affiliates.

• *Inadequate risk management.* A risk may be exacerbated if it is conducted without effective risk-management practices, including the absence of appropriate regulatory authority and requirements. In contrast, existing regulatory requirements or market practices may reduce risks by, for example, limiting exposures or leverage, increasing capital and liquidity, enhancing risk-management practices, restricting excessive risk-taking, providing consolidated prudential regulation and supervision, or increasing regulatory or public transparency. Relevant metrics may include amounts of capital and liquidity.

• *Concentration.* A risk may be amplified if financial exposures or important services are highly concentrated in a small number of entities, creating a risk of widespread losses or the risk that the service could not be replaced in a timely manner at a similar price and volume if existing providers withdrew from the market. Relevant metrics may include market shares in segments of applicable financial markets.

• *Destabilizing activities.* Certain activities, by their nature, particularly those that are sizeable and interconnected with the financial system, can destabilize markets for particular types of financial instruments or impair financial institutions. This risk may arise even when those activities are intentional and permitted by applicable law, such as trading practices that substantially increase volatility in one or more financial markets, or activities that involve moral hazard or conflicts of interest that result in the creation and transmission of significant risks.

The vulnerabilities and metrics listed above identify risks that may arise from broadly conducted activities or from a small number of entities; they do not dictate the use of a specific authority by the Council. Risks to financial stability can arise from widely conducted activities or from a smaller number of entities, and the Council's evaluations and actions will depend on the nature of a vulnerability. While risks from individual entities may be assessed using these types of metrics, the Council also evaluates broader risks, such as by calculating these metrics on an aggregate basis within a particular financial sector. For example, in some cases, risks arising from widespread and substantial leverage in a particular market may be evaluated or addressed on a sector-wide basis, while in other cases risks from a single company whose leverage is outsized relative to other firms in its market may be considered for an entity-specific response.

In addition, in most cases the identification and assessment of a potential risk to financial stability involves consideration of multiple quantitative metrics and qualitative factors. Therefore, the Council uses metrics such as those cited above individually and in combination, as well as other factors, as appropriate, in its analyses.

The Council considers how the adverse effects of potential risks could be transmitted to financial markets or market participants and what impact the potential risk could have on the financial system. Such a transmission of risk can occur through various mechanisms, or channels. The Council has identified four transmission channels that are most likely to facilitate the transmission of the negative effects of a risk to financial stability. These transmission channels, which are non-exhaustive, are:

• *Exposures.* Direct and indirect exposures of creditors, counterparties, investors, and other market participants can result in losses in the event of a default or decreases in asset valuations. In particular, market participants' exposures to a particular financial instrument or asset class could impair those market participants if there is a default on or other reduction in the value of the instrument or assets. The potential threat to U.S. financial stability will generally be greater if the amounts of exposures are larger; if transaction terms provide less protection for counterparties; if exposures are correlated, concentrated, or interconnected with other instruments or asset classes; or if significant counterparties include large financial institutions.

• *Asset liquidation.* A rapid liquidation of financial assets can pose a threat to U.S. financial stability when it causes a significant fall in asset prices that disrupts trading or funding in key markets or causes losses or funding problems for market participants holding those assets. Rapid liquidations can result from a deterioration in asset prices or market functioning that could pressure firms to sell their holdings of affected assets to maintain adequate capital and liquidity, which, in turn, could produce a cycle of asset sales that lead to further market disruptions. The potential risk is greater, for example, if leverage or reliance on short-term funding is higher, if assets are riskier and would experience a reduction in market liquidity in times of broader market stress, and if asset price volatility could lead to significant margin calls.

• *Critical function or service.* A risk to financial stability can arise if there could be a disruption of a critical function or service that is relied upon by market participants and for which there are no ready substitutes that could provide the function or service at a similar price and quantity. This channel is more prominent when the critical function or service is interconnected or large, when operations are opaque, when the function or service uses or relies on leverage to support its activities, or when risk management practices related to operational risks are not sufficient.

• *Contagion.* Even without direct or indirect exposures, contagion can arise from the perception of common vulnerabilities or exposures, such as business models or asset holdings that are similar or highly correlated. Such contagion can spread stress quickly and unexpectedly, particularly in circumstances where there is limited transparency into investment risks, correlated markets, or greater operational risks. Contagion can also arise when there is a loss of confidence in financial instruments that are treated as substitutes for money. In these

circumstances, market dislocations or fire sales may result in a loss of confidence in other financial market sectors or participants, propagating further market dislocations or fire sales.

The presence of any of the vulnerabilities listed above may increase the potential for risks to be transmitted to financial markets or market participants through these or other transmission channels. The Council may consider these vulnerabilities and transmission channels, as well as others that may be relevant, in identifying financial markets, activities, and nonbank financial companies that could pose risks to U.S. financial stability.

The Council may assess risks as they could arise in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment, with market developments such as increased counterparty defaults, decreased funding availability, and decreased asset prices, because in such a context, the risks may have a greater effect on U.S. financial stability.

The Council's work often includes efforts such as sharing data, research, and analysis among Council members and member agencies and their staffs; consulting with regulators and other experts regarding the scope of potential risks and factors that may mitigate those risks; and collaboratively developing analyses for consideration by the Council. As part of this work, the Council may also engage with market participants and other members of the public as it assesses potential risks. In its evaluations, the Council takes into account existing laws and regulations that have mitigated a potential risk to U.S. financial stability. The Council also takes into account the risk profiles and business models of market participants. Empirical data may not be available regarding all potential risks. The type and scope of the Council's analysis will be based on the potential risk under consideration. In many cases, the Council provides information regarding its work in its annual reports.

c. Addressing Potential Risks

In light of the varying sources of risk described above (such as activities, entities, exogenous circumstances, and existing or emerging practices or conditions), the Council may take different approaches to respond to a risk, and may use multiple tools to mitigate a risk. These approaches may include acting to reduce the risk of a shock arising from within the financial system, to mitigate financial vulnerabilities that may increase risks to financial stability, or to improve the resilience of the financial system to shocks. The actions the Council takes may depend on the circumstances. When a potential risk to financial stability is identified, the Council's Deputies Committee will generally direct one or more of the Council's staff-level committees or working groups to consider potential policy approaches or actions the Council could take to assess and address the risk. Those committees and working groups may consider the utility of any of the Council's authorities to respond to risks to U.S. financial stability, including but not limited to those described below.

Interagency coordination and information sharing. In many cases, the Council works with the relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to ensure a potential risk is adequately addressed.[10] If they have adequate authority, existing regulators could take actions to mitigate potential risks to U.S. financial stability identified by the Council. There may be different approaches existing regulators could take, based on their authorities and the urgency of the risk, such as enhancing their regulation or supervision of companies or markets under their jurisdiction; restricting or prohibiting the offering of a product; or requiring market participants to take additional risk-management steps. If existing regulators can address a risk to financial stability in a sufficient and timely way, the Council generally encourages those regulators to do so.

Recommendations to agencies or Congress. The Council may also make formal public recommendations to primary financial regulatory agencies under section 120 of the Dodd-Frank Act. Under section 120, the Council may provide for more stringent regulation of a financial activity by issuing nonbinding recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their jurisdiction.[11] In addition, in any case in which no primary financial regulatory agency exists for the markets or companies conducting financial activities or practices identified by the Council as posing risks, the Council can consider reporting to Congress on recommendations for legislation that would prevent such activities or practices from threatening U.S. financial stability.[12] The Council will make these recommendations only if it determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.[13] The new or heightened standards and safeguards for a financial activity or practice will take costs to long-term economic growth into account, and may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.[14] In its recommendations under section 120, the Council may suggest broad approaches to address the risks it has identified. When appropriate, the Council may make a more specific recommendation. Prior to issuing a recommendation under section 120, the Council will consult with the relevant primary financial regulatory agency and provide notice to the public and opportunity for comment as required by section 120.[15]

Nonbank financial company determinations. In certain cases, the Council may evaluate one or more nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. Under section 113, the Council may determine, by a vote of not fewer than two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council, that a nonbank financial company will be supervised by the

[10] See Dodd-Frank Act sections 112(a)(2)(A), (D), (E), (F).

[11] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

[12] Dodd-Frank Act section 120(d)(3), 12 U.S.C. 5330(d)(3).

[13] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

[14] Dodd-Frank Act section 120(b)(2), 12 U.S.C. 5330(b)(2).

[15] The Council also has authority to issue recommendations to the Board of Governors of the Federal Reserve System (Federal Reserve Board) regarding the establishment of prudential standards and reporting and disclosure requirements applicable to large bank holding companies and nonbank financial companies subject to Federal Reserve Board supervision (Dodd-Frank Act section 115, 12 U.S.C. 5325); recommendations to regulators, Congress, or firms in its annual reports (Dodd-Frank Act section 112(a)(2)(N), 12 U.S.C. 5322(a)(2)(N)); and other recommendations to Congress or Council member agencies (Dodd-Frank Act section 112(a)(2)(D), (F), 12 U.S.C. 5322(a)(2)(D), (F)).

Federal Reserve Board and be subject to prudential standards if the Council determines that (1) material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States. The Council has issued a procedural rule and interpretive guidance regarding its process for considering a nonbank financial company for potential designation under section 113.[16] The Dodd-Frank Act requires the Council to consider 10 specific considerations, such as the company's leverage, relationships with other significant financial companies, and existing regulation by primary financial regulatory agencies, when determining whether a nonbank financial company satisfies either of the determination standards.[17] Due to the unique threat that each nonbank financial company could pose to U.S. financial stability and the nature of the inquiry required by the statutory considerations set forth in section 113, the Council expects that its evaluations of nonbank financial companies under section 113 will be firm-specific and may include an assessment of quantitative and qualitative information that the Council deems relevant to a particular nonbank financial company. The factors described above are not exhaustive and may not apply to all nonbank financial companies under evaluation.

Payment, clearing, and settlement activity designations. The Council also has authority to designate certain payment, clearing, and settlement (PCS) activities ''that the Council determines are, or are likely to become, systemically important'' under Title VIII of the Dodd-Frank Act. PCS activities are defined as activities carried out by financial institutions to facilitate the completion of financial transactions such as funds transfers, securities contracts, futures, forwards, repurchase agreements, swaps, foreign exchange contracts, and financial derivatives. Under the Dodd-Frank Act, PCS activities may include (1) the calculation and communication of unsettled financial transactions between counterparties; (2) the netting of transactions; (3) provision and maintenance of trade, contract, or instrument information; (4) the management of risks and activities associated with continuing financial transactions; (5) transmittal and storage of payment instructions; (6) the movement of funds; (7) the final settlement of financial transactions; and (8) other similar functions that the Council may determine.[18] Before designating a PCS activity, the Council must consult with certain regulatory agencies and must provide financial institutions with advanced notice of the proposed designation by **Federal Register** publication. A financial institution engaged in the PCS activity may request an opportunity for a written or, at the sole discretion of the Council, oral hearing before the Council to demonstrate that the proposed designation is not supported by substantial evidence. The Council may waive the notice and hearing requirements in certain emergency circumstances.[19] Following any designation of a PCS activity, the appropriate federal regulator will establish risk-management standards governing the conduct of the activity by financial institutions.[20] The objectives and principles for these risk-management standards will be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[21] The risk-management standards may address areas such as risk management policies and procedures, margin and collateral requirements, participant or counterparty default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, and capital and financial resource requirements for designated financial market utilities, among other things.[22]

Financial market utility designations. In addition, the Council has authority to designate financial market utilities (FMUs) that it determines are, or are likely to become, systemically important.[23] An FMU is defined as any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.[24] The Council has issued a procedural rule regarding its authority to designate FMUs.[25] In determining whether designation of a given FMU is warranted, the Council must consider (1) the aggregate monetary value of transactions processed by the FMU; (2) the FMU's aggregate exposure to its counterparties; (3) the relationship, interdependencies, or other interactions of the FMU with other FMUs or with PCS activities; (4) the effect of the FMU's failure or disruption on critical markets, financial institutions, or the broader financial system; and (5) any other factors that the Council deems appropriate.[26] Once designated as an FMU, the FMU is subject to the supervisory framework of Title VIII of the Dodd-Frank Act. Section 805(a)(1)(A) requires the Federal Reserve Board to prescribe risk-management standards governing the FMU's operations related to its PCS activities unless the FMU is a derivatives clearing organization or clearing agency.[27] Specifically, section 805(a)(2) grants the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, the authority to prescribe such risk-management standards for a designated FMU that is either a derivatives clearing organization registered under section 5b of the Commodity Exchange Act or a clearing agency registered under section 17A of the Securities Act of 1934.[28] Such standards are intended to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. In addition, the Federal Reserve Board may authorize a Federal Reserve Bank to establish and maintain an account for a designated FMU or provide the designated FMU with access, in unusual or exigent circumstances, to the discount window.[29] A designated FMU is subject

[16] See 12 CFR part 1310.

[17] Dodd-Frank Act section 113(a)(2) and (b)(2), 12 U.S.C. 5323(a)(2) and (b)(2).

[18] Dodd Frank Act section 803(7)(C), 12 U.S.C. 5462(7)(C).

[19] Dodd Frank Act section 804(c), 12 U.S.C. 5463(c).

[20] Dodd Frank Act section 805(a), 12 U.S.C. 5464(a).

[21] Dodd Frank Act section 805(b), 12 U.S.C. 5464(b).

[22] Dodd Frank Act section 805(c), 12 U.S.C. 5464(c).

[23] Dodd-Frank Act section 804(a)(1).

[24] Dodd Frank Act section 803(6)(A), 12 U.S.C. 5462(6)(A).

[25] 12 CFR part 1320.

[26] Dodd Frank Act section 804(a)(2), 12 U.S.C. 5463(a)(2). See also 12 CFR 1320.10.

[27] Dodd-Frank Act section 805(a)(1)(A), 12 U.S.C. 5464(a)(1).

[28] Dodd-Frank Act section 805(a)(2), 12 U.S.C. 5464(a)(2).

[29] Dodd-Frank Act section 806(a)-(b), 12 U.S.C. 5465(a)-(b).

to annual examinations by the relevant federal supervisory agency.[30]

Kayla Arslanian,

Executive Secretary.

[FR Doc. 2023–08969 Filed 4–27–23; 8:45 am]

BILLING CODE 4810–AK–P–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG–2023–01; Docket No. 2023–0002; Sequence No. 14]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Meetings

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, this notice provides the agenda for an in-person and Web-based (hybrid) meeting of the Green Building Advisory Committee (the Committee) and a series of Web-based meetings of the Committee's new Green Leasing Task Group (the Task Group). The in-person meeting is open to the public and the site is accessible to individuals with disabilities. All meetings are open for the public to observe; online attendees are required, and in-person attendees are encouraged to register in advance to attend as instructed below.

DATES: The Committee's hybrid meeting will be held Wednesday, May 10, 2023, online and in-person from 10:00 a.m.–12:30 p.m., Central Time (11:00 a.m.–1:30 p.m., Eastern Time) at the Minneapolis Marriott City Center, 30 South 7th Street Minneapolis, Minnesota, USA, 55402. In addition, the Committee's Green Leasing Task Group will hold a series of Web-based meetings on alternate Thursdays from May 18, 2023, through December 14, 2023, from 3:00 p.m. to 4:00 p.m., Eastern Time (ET).

FOR FURTHER INFORMATION CONTACT: Dr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, GSA, 1800 F Street NW, (Mail-code: MG), Washington, DC 20405, at 202–219–1121, or at *gbac@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, will be made available on-line at *http://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance and Public Comment

To obtain information on observing any or all of these meetings, please follow the instructions on the Committee website at: *https://www.gsa.gov/governmentwide-initiatives/federal-highperformance-green-buildings/policy/green-building-advisory-committee/advisory-committee-meetings.* Registrants will be asked to provide your full name, organization and email address, which meetings you would like to observe, and, for the hybrid May 10, 2023 meeting, whether you plan to attend in-person or online, and whether you would like to provide public comment. Requests to observe the May 10, 2023 meeting virtually must be received by 5:00 p.m. ET, on Wednesday, May 3, 2023 in order to receive the meeting information. Registration for in-person attendance is highly encouraged.

Requests to observe the full series of Task Group meetings must be received by 5:00 p.m. ET, on Monday, May 15, 2023. After that time, requests to observe ongoing Task Group meetings must be received by 5:00 p.m. ET on the Monday before the meeting in question. Since Task Group meetings are conducted as a series, it will be most useful to observe all or most of them from the start.

For all online meetings, Web meeting attendance information will be provided following registration. Time will be provided at all meetings for public comment wherever possible.

GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the Web meeting site before the calls is recommended. To request an accommodation, such as closed captioning, or to ask about accessibility, please contact Dr. Sandler at *gbac@gsa.gov* at least 10 business days prior to the meeting to give GSA as much time as possible to process the request.

Background

The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (EISA, 42 U.S.C. 17123). Under this authority, the Committee provides independent policy advice and recommendations to GSA to advance federal building innovations in planning, design, and operations to reduce costs, enable agency missions, enhance human health and performance, and minimize environmental impacts.

May 10, 2023 Meeting Agenda

- Introductions
- GSA Updates
- Federal Building Decarbonization Task Group Update
- Federal Green Leasing:
  - The Challenge and Proposed Plans
  - Public Discussion: How to Engage the Commercial Building Market?
- Additional Public Comment and Closing Comments

Green Leasing Task Group

The Green Leasing Task Group will explore and recommend approaches to help GSA meet federal requirements for net zero greenhouse gas emissions in its leasing of space in privately-owned commercial buildings for federal use.

The purpose of these Web-based meetings is for the Task Group to develop consensus recommendations for submission to the full Committee. The Committee will, in turn, deliberate on the Task Group recommendations and decide whether to proceed with formal advice to GSA based upon them.

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, General Services Administration.

[FR Doc. 2023–08769 Filed 4–27–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10316, CMS–10260, CMS–367a–e, and CMS–10243]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public

[30] Dodd-Frank Act section 807, 12 U.S.C. 5466.

comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 30, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Implementation of the Medicare Prescription Drug Plan (PDP) and Medicare Advantage (MA) Plan Disenrollment Reasons Survey; *Use:* The Balanced Budget Act of 1997 required that the CMS publicly report two years of disenrollment rates on all Medicare + Choice (M+C) organizations. Disenrollment rates are a useful measure of beneficiary dissatisfaction with a plan; this information is even more useful when reasons for disenrollment are provided to consumers, insurers, and other stakeholders. Advocacy organizations agree that CMS needs to report disenrollment reasons so that disenrollment rates can be interpreted correctly.

Specifically, the MMA under Sec. 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding the PDP and MA contracts pursuant to section 1860D–4(d). Plan disenrollment is generally believed to be a broad indicator of beneficiary dissatisfaction with some aspect of plan services, such as access to care, customer service, cost of the plan, services, benefits provided, or quality of care.

The information generated from the disenrollment survey supports CMS' ongoing efforts to assess plan performance and provide oversight to the functioning of Medicare Advantage (Part C) and PDP (Part D) plans, which provide health care services to millions of Medicare beneficiaries (*i.e.,* 28 million for Part C coverage and 49 million for Part D coverage).

Beneficiary experiences of care (as measured in the MCAHPS survey) and dissatisfaction (as measured in the disenrollment survey) with plan performance are both important sources of information for plan monitoring and oversight. The disenrollment survey assesses different aspects of dissatisfaction (*i.e.,* reasons why beneficiaries voluntarily left a plan), which can identify problems with plan operations; performance areas evaluated include access to care, customer service, cost, coverage, benefits provided, and quality of care. Understanding how well plans perform on these dimensions of care and service helps CMS understand whether beneficiaries are satisfied with the care they are receiving from contracted plans. When and if plans are found to be performing poorly against an array of performance measures, including beneficiary disenrollment, CMS may take corrective action. *Form Number:* CMS–10316 (OMB control number: 0938–1113); *Frequency:* Yearly; *Affected Public:* Individuals and Households; *Number of Respondents:* 32,750; *Total Annual Responses:* 32,750; *Total Annual Hours:* 7,055. (For policy questions regarding this collection contact Beth Simons at 415–744–3780).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program: Final Marketing Provisions in 42 CFR 422.111(a)(3) and 423.128(a)(3); *Use:* CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851(d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D–1(c) of the Act and § 423.128(a)(3) for Part D sponsors. The regulatory provisions at §§ 422.111(b) and 423.128(b) require MA organizations and Part D sponsors to disclose plan information, including: service area, benefits, access, grievance and appeals procedures, and quality improvement/assurance requirements. MA organizations and sponsors may send the ANOC separately from the EOC, but must send the ANOC for enrollee receipt by September 30. The required due date for the EOC is 15 days prior to the start of the AEP.

CMS requires MA organization and Part D sponsors to submit marketing materials to CMS for review prior to the MA organization or sponsor distributing those materials to the public. In section 1851(h), paragraphs (1), (2), and (3) establish this requirement for MA organizations. Section 1860D–1(b)(1)(B)(vi) directs Part D sponsors to follow the same requirements in section 1851(h) that MA organizations must follow for this purpose. *Form number:* CMS–10260 (OMB control number: 0938–1051); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 800; *Number of Responses:* 48,439; *Total Burden Hours:* 13,568. (For questions regarding this collection contact Elizabeth Jacob at 410–786–8658).

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program Labeler Reporting Format; *Use:* Labelers transmit drug product and pricing data to CMS within 30 days after the end of each calendar month and quarter. CMS calculates the unit rebate amount (URA) and the unit rebate offset amount (UROA) for each new drug application (NDC) and distributes to all State Medicaid agencies. States use the URA to invoice

the labeler for rebates and the UROA to report onto CMS–64. The monthly data is used to calculate Federal Upper Limit (FUL) prices for applicable drugs and for states that opt to use this data to establish their pharmacy reimbursement methodology. In this 2023 iteration, we adding a new use of the reported data. The new use would allow us to calculate inflationary rebates under the Inflation Reduction Act of 2022. The change has no impact on our burden estimates. We are not revising any of our reporting forms. *Form Number:* CMS–367a, b, c, d, and e (OMB control number: 0938–0578); *Frequency:* Monthly, quarterly, and on occasion; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 818; *Total Annual Responses:* 15,742; *Total Annual Hours:* 591,042. (For policy questions regarding this collection contact Andrea Wellington at 410–786–3490.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Testing Experience and Functional Tools (TEFT): Functional Assessment Standardized Items (FASI) Based on the CARE Tool; *Use:* As part of the National Testing Experience and Functional Assessment Tools (TEFT) demonstration, CMS tested the use of functional assessment standardized items (FASI) among community-based long term services and supports (CB–LTSS) populations. The TEFT initiative built on the national efforts to create electronically exchangeable data across providers and the caregiving team to develop more person-centered services under the Medicare and Medicaid programs. After conclusion of the field test, states have begun implementing the related FASI performance measures and the FASI team continues to recruit additional states. While the team has not conducted data collection since the FASI field test in 2017, and that there are no concrete immediate plans to collect new data, new data collection to support measure re-endorsement activities due in 2025 will be needed. The data collection may also need to be conducted sooner if significant changes are made to the measures' technical specifications, in the interim. Due to the uncertainty on when data collection may need to be done, an extension of the existing package and a subsequent revision would facilitate expedient resumption of the data collection and testing efforts, especially given the quick turnaround time for activities (such as National Quality Forum measure endorsement) which depend on the data collection.

FASI is based on a subset of the July 27, 2007 (72 FR 144) Continuity Assessment Record and Evaluation (CARE) items which are now included in post-acute setting Federal assessment forms for nursing facilities—Resident Assessment Instrument (RAI) Minimum Data Set (MDS), Inpatient Rehabilitation Facilities Patient Assessment Instrument (IRF–PAI), and Long Term Care Hospitals Continuity Assessment Record & Evaluation (CARE) Data Set (LCDS) to measure function in a standardized way. The FASI items include the standardized mobility and self-care items included in the MDS, IRF–PAI, and, LCDS as well as some additional mobility items appropriate to measuring independence in the community and personal preferences or goals items related to function. Also included are certain instrumental activities of daily living and some modified caregiver assistance items from the Home Health Outcome and Assessment Information Set (OASIS) tool. A few additional items to describe the populations' age, gender, and geographic area of residence are also included. Use of the same items to measure functional status in nursing facilities and community-based programs will help states report on their rebalancing efforts. Also, because these items will have electronic specifications developed by CMS, they can assist state efforts to develop exchangeable electronic data to follow the person across services and estimate total costs as well as measure functional status across time. The complete FASI set is included in this information collection request. *Form Number:* CMS–10243 (OMB control number: 0938–1037); *Frequency:* On occasion; *Affected Public:* Individuals and Households; *Number of Respondents:* 1,570; *Total Annual Responses:* 1,570; *Total Annual Hours:* 785. (For policy questions regarding this collection contact Kerry Lida at 410–786–4826.)

Dated: April 25, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–09053 Filed 4–27–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; State Plan Child Support Collection and Establishment of Paternity Title IV–D of the Social Security Act

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the forms OCSE–21–U4: Transmittal and Notice of Approval of State Plan Material for: Title IV–D of the Social Security Act, and OCSE–100: State Plan (Office of Management and Budget (OMB) #0970–0017, expiration July 31, 2023). No changes are proposed.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OCSE has approved an IV–D state plan for each state. Federal regulations require states to amend their state plans only when necessary to reflect new or revised federal statutes or regulations or material change in any state laws, regulations, policies, or IV–D agency procedures. The requirement for submission of a state plan and plan amendments for the Child Support Enforcement program is found in sections 452, 454, and 466 of the Social Security Act.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
State Plan (OCSE–100)	54	12	.5	324
State Plan Transmittal (OCSE–21–U4)	54	12	.25	162

Estimated Total Annual Burden Hours: 486.

Authority: 42 U.S.C. 652, 654, and 666.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–09005 Filed 4–27–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Tribal Budget and Narrative Justification Template (OMB #: 0970–0548)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to renew the collection of expenditure estimate forms for the tribal child support enforcement program through an optional financial reporting form, Tribal Budget and Narrative Justification Template (Office of Management and Budget (OMB) #: 0970–0548; expiration date June 30, 2023). No changes are proposed.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov*. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: To receive child support funding under 45 CFR part 309, tribes and tribal organizations must submit the financial forms described in 45 CFR 309.130(b) and other forms as the Secretary may designate, due no later than August 1 annually. This optional template is designed for tribes operating an approved tribal child support enforcement program to use in preparing their annual budget and narrative justification estimates in accordance with the tribal child support enforcement regulations. The optional Tribal Budget and Narrative Justification Template helps improve efficiency and establish uniformity and consistency in the annual budget submission and review process. Tribes may use the Excel or Word version of the template to submit the required financial information.

Respondents: Tribes and Tribal Organizations administering a tribal child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Tribal Budget and Narrative Justification—Excel	52	3	16	2,496	832
Tribal Budget and Narrative Justification—Word	8	3	20	480	160

Estimated Total Annual Burden Hours: 992.

Authority: 45 CFR 309.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–09034 Filed 4–27–23; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0554]

Submission for Office of Management and Budget (OMB) Review; Placement and Transfer of Unaccompanied Children Into Office of Refugee Resettlement Care Provider Facilities

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on the proposed information collection. This request is to extend approval of all forms currently approved under OMB #: 0970–0554. This includes two forms that were recently approved through emergency approval in October 2022. These forms expand specific

policy and procedural protections to category 2 sponsors, children who wish to challenge placement in restrictive settings, and children seeking access to legal counsel. This request also seeks approval for revisions to a form that will ensure that UC are placed in foster homes that meet their individual needs and ensure continuity of services.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR is seeking to continue data collection for the with all forms approved under OMB #: 0970–0554, including the below-described revisions that were recently approved under emergency approval for six months, additional revisions to Form P–4, and revisions currently requested to Form P–5.

Revisions Approved Under Emergency Approval

ORR added a new instrument titled Notice of Administrative Review (Form P–18) that serves as written notice of receipt of a Placement Review Panel request and provides the UC with information on next steps to take when requesting a review and reconsideration of the UC's placement in a restrictive setting. The notice also requests that the UC and/or their representative provide a written statement and decision on whether they are requesting a hearing. If a hearing is requested, the UC and/or their representative are also asked to provide:

- The name, email address, and telephone number for the UC's attorney or child advocate.
- The UC's preferred language.
- Whether the UC will need an interpreter (of if the UC's representative will provide an interpreter).
- The names and email addresses for the witnesses the UC or their representative plan to call at the hearing.
- Whether the UC has any special needs.

Additionally, ORR made the below-listed revisions to the Notice of Placement in a Restrictive Setting (Form P–4). Many of the new fields in this form are also contained in the 30-Day Restrictive Placement Case Review (Form S–16), which is approved under OMB #0970–0553. The below revisions effectively merge Forms P–4 and S–16 into one form. ORR plans to submit a nonsubstantive change request to discontinue Form S–16 soon.

- Reorganized the form into six main sections—UC Information, ORR's Determinations Related to Safety, Reasons for Restrictive Placement, Summary of Supporting Evidence for Restrictive Placement, Your Rights to Challenge Your Placement, and UC's Acknowledgement of Receipt.
- Added the following fields under the UC Information section:
  - Preferred Language.
  - Out-of-Network Facility Name.
  - If applicable, explain the reasons that the UC is placed in an out-of-network facility.
  - Date of Placement at Current Restrictive Facility.
  - Date of Initial Notice of Placement.
  - Date Next Notice of Placement is Due (within 30 days).
- Created the ORR's Determinations Related to Safety section and added the following checkboxes:
  - UC presents a danger to self or community.
  - UC poses a risk of escape.
- Revised the Reasons for Restrictive Placement section as follows:
  - Under Secure Facility:
    - Removed checkbox ''Have committed, threatened to commit, or engaged in serious, self-harming behavior that poses a danger to self while in ORR custody.''
    - Revised the checkbox ''Have a history of or display sexual predatory behavior, or have inappropriate sexual behavior.'' to instead read ''Have committed sexual abuse, where there is coercion by overt or implied threats of violence against another person and/or there is an immediate danger to others.''
    - Added checkbox ''Are pending transfer of discharge/release to:''
  - Under Residential Treatment Center:
    - Added checkbox ''Are pending transfer of discharge/release to:''
  - Under Staff Secure Facility:
    - Replaced checkbox ''Could be stepped down from a secure facility'' with ''Are pending transfer of discharge/release to:''
- Under Summary of Supporting Evidence for Restrictive Placement:
  - Split text box into three separate text boxes, one each for the case manager, case coordinator, and federal field specialist.
  - Added fields for case manager, case coordinator, and federal field specialist names and their overall recommendations.
- Added additional information on how a UC may request to change their placement in a restrictive setting under the Your Rights to Challenge Your Placement section.
- Added a field for the name and title of the care provider/issuing official.
- Added fields for the language used to explain the form to the UC, the name of the person who explained the form, and their interpreter ID#, if applicable.

Currently Proposed Revisions

ORR is proposing the following additional revision to the Notice of Placement in a Restrictive Setting (Form P–4):

- Replace the abbreviation UC with ''unaccompanied child'' or ''child'' throughout the form.
- Under Section C, rephrase instructions to read ''Check all reasons that apply for the current placement recommendation only'' (instead of ''For each type of placement, check all reasons that apply for that placement only'').
- Under Section D, remove phrase ''specific incidents related to'' from ''Provide a detailed summary of specific incidents related to the reason(s) for restrictive placement you selected above'' to avoid any accidental conflation with Significant Incident Report (SIR) forms.
- Under Section E, clarify that the right to consult an attorney is at no cost to the federal government, as stated in the *Lucas R.* Preliminary Injunction.
- Under Section F, clarify that there is no positive or negative inference from a child's decision not to sign the form.

ORR is proposing the following revisions to its Long-Term Foster Care Placement Memo (Form P–5):

- Change the title to ''Community-Based Care Placement Memo'' and update the term ''long-term foster care'' to ''community-based care'' throughout the memo. This term is more in line with terminology currently used in domestic child welfare programs and will be inclusive of ORR long-term foster care and transitional foster care programs.
- Increase the number of respondents and number of responses per

respondent to include transitional foster care programs (in addition to long-term foster care programs).

- Update instructions on which fields are completed for initial placements and which are completed for transfers within the community-based care program.
- Added citation to related policies in the instructions.
- Reword some fields and instructions for clarity.
- Add field to capture the facility name for children placed in an out-of-network community-based care program.
- Separate fields that capture contact information for the foster family or group home into separate subsections and expand the fields to capture additional contact information (*e.g.,* phone or email) in addition to name and address.

For information about all currently approved forms under this OMB number, see: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202210-0970-008.*

Respondents: ORR grantee and contractor staff; UC; and other Federal agencies.

Annual Burden Estimates

Note: These burden estimates include burden related to the revisions described above and currently approved forms for which we are not proposing any changes.

ESTIMATED BURDEN HOURS FOR RESPONDENTS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Placement Authorization (Form P–1)	262	536	0.08	11,235
Authorization for Medical, Dental, and Mental Health Care (Form P–2)	262	536	0.08	11,235
Notice of Placement in a Restrictive Setting (Form P–4)	15	114	0.33	564
Community-Based Care Placement Memo (Form P–5)	110	337	0.25	9,268
UC Referral (Form P–7)	25	4,909	1.00	122,725
Care Provider Checklist for Transfers to Influx Care Facilities (Form P–8)	262	19	0.25	1,245
Medical Checklist for Transfers (Form P–9A)	262	49	0.08	1,027
Medical Checklist for Influx Transfers (Form P–9B)	262	96	0.17	4,276
Transfer Request (Form P–10A)	262	67	0.42	7,373
Transfer Request (Form P–10A)	275	67	0.33	6,080
Influx Transfer Request (Form P–10B)	262	96	0.42	10,564
Transfer Summary and Tracking (Form P–11)	262	67	0.17	2,984
Program Entity (Form P–12)	262	12	0.50	1,572
UC Profile (Form P–13)	262	468	0.75	91,962
ORR Transfer Notification—ORR Notification to Immigration and Customs Enforcement Chief Counsel of Transfer of UC and Request to Change Address/Venue (Form P–14)	262	67	0.17	2,984
Family Group Entity (Form P–15)	25	120	0.08	240
Influx Transfer Manifest (Form P–16)	3	12	0.33	12
Influx Transfer Manual and Prescreen Criteria Review (Form P–17)	262	56,213	0.50	7,363,903
Notice of Administrative Review (Form P–18)	200	1	0.83	166
Estimated Annual Burden Hours Total				7,649,415

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno Settlement Agreement,* No. CV85–4544–RJK (C.D. Cal. 1996); 45 CFR part 411; *Lucas R. et al.* v. *Azar et al.* (Case No. CV 18–5741–DMG (PLAx)) Preliminary Injunction.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–09048 Filed 4–27–23; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1886]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Endorser Status and Actual Use in Direct-to-Consumer Television Ads

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 30, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under Review—Open for Public Comments’’ or by using the search function. The title of this information collection is ‘‘Endorser Status and Actual Use in Direct-to-Consumer Television Ads.’’ Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA

has submitted the following proposed collection of information to OMB for review and clearance.

Endorser Status and Actual Use in Direct-to-Consumer Television Ads

OMB Control Number 0910—New

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The mission of the Office of Prescription Drug Promotion (OPDP) is to protect the public health by helping to ensure that prescription drug promotional material is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and the characteristics of the disease and product impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features.

Because we recognize that the strength of data and the confidence in the robust nature of the findings are improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our home page at *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office.

The objective of the present research is to conduct experimental studies to examine issues related to endorsers in direct-to-consumer (DTC) prescription drug promotion. This study complements one that has recently been completed (FDA–2019–N–5900, OMB control number 0910–0894, Expiration Date: March 31, 2023). As that study examined a number of different endorser types in print or internet settings and focused on examining how various disclosures of the payment status of the endorser influenced audience reactions, this proposed research extends the prior research by examining actual-use disclosures and a different medium, television ads. Prior research has shown that endorsements by expert physicians and pharmacist were the most likely to lead to purchase intentions, followed by endorsements by consumers, and lastly, by celebrities (Refs. 1 and 2).

For healthcare providers (HCPs) endorsing a prescription drug product, guiding industry principles advise that advertisements should contain a disclosure that the HCP has been compensated for the endorsement (Ref. 3). Industry guiding principles further recommend that an advertisement disclose when an actor is being used as an HCP to promote DTC prescription drugs.

Pharmaceutical firms also often use everyday people, either actual patients or actors portraying patients, in DTC promotion, relying on qualities of identification with the individual endorsing the product and perceived credibility (Ref. 4). While industry guidelines recommend that companies choosing to feature actors in the roles of HCPs in a DTC television or print ad acknowledge in the ad that actors are being used, the guidelines do not mention disclosures that the ''patient'' in an ad is being portrayed by an actor (Ref. 3). Some advertisers endeavor to gain credibility among viewers by using actual patients to endorse the product, with a disclosure that states they are actual users of the product (''actual-use disclosure'') (Ref. 5).

The present research will specifically examine the influence of two independent variables—endorser type (patient, physician) and an actual-use disclosure (utilizer, actor, none)—in television advertisements. Dependent variables will include perceptions of the risks and benefits of the promoted prescription drug, attitudes toward and perceptions of the endorser, attention paid to the ad, and behavioral intentions. Because age and education level may affect perceptions of the ad, we plan to explore whether age and education level influence these effects.

This research will involve two studies. Studies 1 and 2 will use a 2 × 3 factorial design run concurrently and independently with a sample of consumers who have been diagnosed with diabetes (Study 1) or rheumatoid arthritis (Study 2), each watching a DTC television ad for a fictitious drug indicated to treat the corresponding medical conditions. The ad will be manipulated to assess the impact of two categories of commonly used industry spokespeople: a patient and a physician. We will test three actual-use disclosure conditions: (1) an actual-use disclosure that indicates that the endorser either uses or prescribes the prescription drug in real life (*i.e.,* utilizer), (2) an actual-use disclosure that specifies the endorser is an actor, and (3) a control with no actual-use disclosure. The design for Studies 1 and 2 is presented in table 1.

TABLE 1—STUDY 1 AND STUDY 2 EXPERIMENTAL DESIGN

Actual-use disclosure	Endorser type	
	Patient	Physician
Utilizer.		
Actor.		
None.		

In both studies, participants will be randomly assigned to one of six experimental conditions (see table 1), view their assigned stimulus, complete a survey, and provide feedback on one of the other ad versions. We will conduct pretests with 126 consumers who self-identify as having been diagnosed with diabetes and 126 consumers who self-identify as having been diagnosed with rheumatoid arthritis, recruited from a web-based research vendor. For the main study, we will then recruit 648 consumers who self-identify as having been diagnosed with diabetes and 648 consumers who self-identify as having been diagnosed with rheumatoid arthritis. Each participant will see one of six versions of a television ad for a fictitious prescription diabetes or rheumatoid arthritis treatment, as reflected in table 1. They will answer a questionnaire designed to take no more than 20 minutes.

In the **Federal Register** of September 23, 2022 (87 FR 58099), FDA published

a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours) [2]	Total hours
Study 1 Pretest					
Study 1 Pretest Screener Completes	630	1	630	.03 (2 minutes)	18.9
Study 1 Pretest Questionnaire Completes	126	1	126	.30 (18 minutes)	38
Study 2 Pretest					
Study 2 Pretest Screener Completes	420	1	420	.03 (2 minutes)	12.6
Study 2 Pretest Questionnaire Completes	126	1	126	.30 (18 minutes)	38
Study 1 Main Study					
Study 1 Main Study Screener Completes	3,240	1	3,240	.03 (2 minutes)	97.2
Study 1 Main Study Questionnaire Completes	648	1	648	.30 (18 minutes)	194
Study 2 Main Study					
Study 2 Main Study Screener Completes	2,160	1	2,160	.03 (2 minutes)	64.8
Study 2 Main Study Questionnaire Completes	648	1	648	.30 (18 minutes)	194
Total					657.50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Burden estimates of less than 1 hour are expressed as a fraction of an hour in the format ''[number of minutes per response]/60.''

References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. LaTour, C. and M. Smith, ''A Study of Expert Endorsement of OTC Pharmaceutical Products,'' *Journal of Pharmaceutical Marketing & Management,* Vol. 1, Issue 2, pp. 117–128, 1986.
2. Bhutada, N.S. and B.L. Rollins, ''Disease-Specific Direct-to-Consumer Advertising of Pharmaceuticals: An Examination of Endorser Type and Gender Effects on Consumers' Attitudes and Behaviors,'' *Research in Social and Administrative Pharmacy,* Vol. 11, Issue 6, pp. 891–900, 2015.
3. *Pharmaceutical Research and Manufacturers of America (PhRMA), ''PhRMA Guiding Principles: Direct to Consumer Advertisements About Prescription Medicines,'' *Pharmaceutical Research and Manufacturers of America,* Washington, DC, *https://www.phrma.org,* revised October 2018, available at *https://phrma.org/-/media/Project/PhRMA/PhRMA-Org/PhRMA-Org/PDF/P-R/PhRMA_Guiding_Principles_2018.pdf* (accessed May 18, 2022).
4. *Schouten, A.P., L. Janssen, and M. Verspaget, ''Celebrity vs. Influencer Endorsements in Advertising: The Role of Identification, Credibility, and Product-Endorser Fit,'' *International Journal of Advertising,* Vol. 39, Issue 2, pp. 258–281, 2020, *https://doi.org/10.1080/02650487.2019.1634898.*
5. *Bulik, B.S., ''Merck Adds Real Patient to 'TRU' Keytruda TV Ad,'' Fierce Pharma, September 27, 2017, available at *https://www.fiercepharma.com/marketing/new-merck-tv-ad-for-keytruda-continues-tru-theme-but-now-features-real-patient* (accessed May 18, 2022).

Dated: April 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08965 Filed 4–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–3208]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 30, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB

control number for this information collection is 0910–0284. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Records and Reports Concerning Experiences With Approved New Animal Drugs: Adverse Event Reports

OMB Control Number 0910–0284—Extension

This information collection supports statutory and regulatory requirements governing reporting associated with certain animal drug products. With regard to adverse events and product/manufacturing defects associated with approved new animal drugs, section 512(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)) requires applicants with approved new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) to establish and maintain records and reports of data relating to experience with uses of such drug, or with respect to animal feeds bearing or containing such drug, to facilitate a determination under section 512(e) as to whether there may be grounds for suspending or withdrawing approval of the NADA or ANADA under section 512(e) or 512(m)(4).

In 2020, FDA amended § 514.80 (21 CFR 514.80) to require electronic submission of certain postmarketing safety reports for approved new animal drugs and to provide a procedure for requesting a temporary waiver of the requirement. We, therefore, retain use of certain paper-based forms. Section 514.80 requires applicants and nonapplicants to keep records of and report to us data, studies, and other information concerning experience with new animal drugs for each approved NADA and ANADA. Following complaints from animal owners or veterinarians, or following their own detection of a problem, applicants or nonapplicants are required to submit adverse event reports and product/manufacturing defect reports under § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) on Form FDA 1932.

The information collection includes electronic submission of adverse event reports and product/manufacturing defect reports under § 514.80(b)(1), (b)(2)(i) and (ii), (b)(3), and (b)(4)(iv)(A) and (C) using Form FDA 1932. The information collection also includes submissions under § 514.80(d)(2), by an applicant or nonapplicant requesting, in writing, a temporary waiver of the electronic submission requirements. The initial request may be by telephone or email to the Center for Veterinary Medicine's Division of Pharmacovigilance and Surveillance, with prompt written followup submitted as a letter to the application(s). FDA will grant waivers on a limited basis for good cause shown. If FDA grants a waiver, the applicant or nonapplicant must comply with the conditions for reporting specified by FDA upon granting the waiver.

Description of Respondents: Respondents to this collection of information are applicants and nonapplicants as defined in 21 CFR 514.3. Respondents include individuals and the private sector (for-profit businesses).

In the **Federal Register** of December 22, 2022 (87 FR 78694) FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received it was not responsive to any of the four information collection topics solicited in our notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medicated feed reports, 510.301(a) and (b).	N/A	8	1	8	0.25 (15 minutes)	2
Submission of postmarketing safety reports under § 514.80(b)(1), (2)(i) and (ii), (3) , and (4)(iv)(A) and (C).	1932	85	1,249	98,639	1	98,639
Voluntary reporting FDA Form 1932a for the public.	1932a	106	1	106	1	106
514.80(b)(4) Periodic Drug Experience Reports.	2301	79	20	1,582	16	25,312
514.80(b)(5)(i) Special Drug Experience Reports.	2301	78	215	16,790	2	33,580
514.80(b)(5)(ii) Advertisement and Promotional labeling.	2301	38	192	7,282	2	14,564
514.80(b)(5)(iii) Distributor's Statements.	2301	22	2	36	2	72
514.80(d)(2)	N/A	1	1	1	1	1
Total						172,276

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping, 510.301 [2]	8	1	8	4	32

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping, 21 U.S.C. 360b(1) and 514.80(e) [3]	79	1,575.14	124,436	14	1,742,104
Total					1,742,136

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] This estimate includes all recordkeeping by licensed medicated feed manufacturers under § 510.301.
[3] This estimate includes all recordkeeping by applicants of approved NADAs, ANADAs, and conditional NADAs under § 514.80(e).

Upon review of the information collection, we have adjusted our estimated burden to reflect an overall increase of 136,029.75 hours and 1,677,019 responses/records, annually.

Dated: April 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08999 Filed 4–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0341]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Federal-State Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 30, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under Review—Open for Public Comments’’ or by using the search function. The OMB control number for this information collection is 0910–0760. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Federal-State Food Regulatory Program Standards

OMB Control Number 0910–0760—Revision

This information collection supports the FDA's Animal Food (formerly Feed) Regulatory Program Standards (AFRPS) and Egg Regulatory Program Standards (ERPS). In the United States, Federal and State government agencies ensure the safety of human and animal food. FDA is responsible for ensuring that all human and animal food moving in interstate commerce, except those under the U.S. Department of Agriculture jurisdiction, are safe, wholesome, and labeled properly. States are responsible for conducting inspections and regulatory activities that help ensure human and animal food produced, processed, and distributed within their jurisdictions are safe and in compliance with State laws and regulations. States primarily perform inspections under their own regulatory authority. Some States conduct inspections of human and animal food facilities under contract with FDA. Because jurisdictions may overlap, FDA and States collaborate and share resources to protect human and animal food.

The FDA Food Safety Modernization Act calls for enhanced partnerships and provides a legal mandate for developing an Integrated Food Safety System (IFSS). FDA is committed to implementing an IFSS thereby optimizing coordination of human and animal food safety efforts with Federal, State, local, tribal, and territorial regulatory and public health agencies. Model standards provide a consistent, underlying foundation that is critical for uniformity across State and Federal agencies to ensure credibility of human and animal food programs within the IFSS. The AFRPS and ERPS provide a uniform and consistent approach to animal food and egg regulation in the United States. Implementation is voluntary.

The AFRPS and ERPS are the frameworks that each State should use to design, manage, and improve its animal food or egg regulatory program. Each standard has a purpose statement, requirement summary, description of program elements, projected outcomes, and a list of required documentation. When a state program voluntarily agrees to implement the standards, it must fully implement and maintain the individual program elements and documentation requirements in each standard in order to fully implement the standard. We invite you to visit our website (*https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/national-integrated-food-safety-system-ifss-programs-and-initiatives/regulatory-program-standards#:~:text=Regulatory%20program%20standards%20establish%20a,regulating%20human%20and%20animal%20food*) for more information and to access the program standards.

Both the AFRPS and ERPS packages include forms, worksheets, and templates to help the State program assess and meet the program elements in the standard. State programs are not obligated to use the forms, worksheets, and templates. Other manual or automated forms, worksheets, and templates may be used as long as the pertinent data elements are present. States submit the information collected annually via email to the appropriate FDA program manager. Records and other documents specified in the AFRPS and ERPS must be maintained in good order by the state program and must be available to verify the implementation of each standard.

As set forth in the AFRPS and ERPS, the state program is expected to review and update its improvement plan on an annual basis. The state program completes an evaluation of its

implementation status annually following the baseline evaluation by reviewing and updating the self-assessment worksheets and required documentation for each standard. The evaluation is needed to determine if each standard's requirements are, or remain, fully met, partially met, or not met. The State program revises the improvement plan based upon this evaluation.

In collaboration with the State Governments, FDA recently completed a revision of the animal food program standards that incorporated the most current knowledge and lessons learned in the application of the 2020 AFRPS by State partners and program assessment by FDA. In an effort to improve program effectiveness, understanding and clarity, changes to the AFRPS include those to program definitions, all 11 program standards, appendices, and assessment worksheets that may be used by the States who have adopted the AFRPS. Such changes include updates to terminology, most notably replacing the term ''animal feed'' with ''animal food,'' consistent with the terminology of the FDA Food Safety Modernization Act, and minor editorial changes. Other changes include streamlining both the standards and appendices to be less prescriptive in nature and focus more on capturing information needs. This process results in an overall reduction of 11 appendices (most of which provided more program specific guidance or examples and therefore are not expected to change the burden) and a reformatting of the remaining appendices to be more uniform, succinct, and tabular in structure. The revised program standards are the result of external collaboration and coordination between FDA, the Association of American Feed Control Officials and state governments in which we consider any formal comments received on the 2020 edition of the program standards.

Description of Respondents: Respondents are state departments of agriculture or health enrolled in the AFRPS or ERPS (State Governments).

In the **Federal Register** of November 3, 2022 (87 FR 66307), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received and considered three comments. Two comments questioned the value of transitioning from the term ''animal feed'' to ''animal food,'' expressing concern for potential confusion unless other entities including member states also changed their terminology. The term ''food'' is defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)) (the FD&C Act) as ''articles used for food or drink for man or other animals.'' Section 201(w) of the FD&C Act defines ''animal feed'' more specifically as, ''an article which is intended for use for food for animals other than man and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal.'' We believe the term ''animal feed'' is a useful distinction in some circumstances, but that ''food'' or ''animal food'' more accurately describes the regulated market.

One comment addressed public access to government data and the Federal policy development process, among other topics, all of which we consider to be outside the scope of this information collection. Respondents to this information collection maintain records and provide procedures and other documentation to demonstrate a standardized animal feed regulatory program. Another comment questioned the practical utility of the AFRPS, suggesting that FDA should implement ''a program that encourages uniform enforcement of laws/regulations across all 50 States.'' We believe the AFRPS is the best way to achieve that goal.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondents; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State, local, Territorial, and/or Tribal Governments; submission of data elements to FDA consistent with AFRPS	25	1	25	569	14,225
State, local, Territorial, and/or Tribal Governments; submission of data elements to FDA consistent with ERPS	2	1	2	569	1,138
Total					15,363

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondents; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State, local, Territorial, and/or Tribal Governments; records maintenance for data elements consistent with AFRPS	25	11	275	40	11,000
State, local, Territorial, and/or Tribal Governments; records maintenance for data elements consistent with ERPS	2	10	20	40	800
Total					11,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

No change in burden is expected to be incurred with the implementation of the revised AFRPS. However, based on a review of the information collection since our last submission, the estimated burden for the information collection reflects an overall adjustment increase of 188 responses and a corresponding increase of 2,817 burden hours. We

adjusted the number of respondents to the information collection associated with the AFRPS to reflect a reduction in enrollment since our last evaluation. Also, since the publication of the 60-day notice, we adjusted the number of respondents to the information collection to reflect a reduction in ERPS enrollment. In addition, based on the Agency's experience over the past 3 years, we added reporting burden and adjusted the recordkeeping burden estimates associated with the AFRPS and ERPS, resulting in an increase in responses and burden hours.

Dated: April 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08971 Filed 4–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2226]

Cheese Slice Products Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a temporary permit has been issued to Bongards Creameries (the applicant) to market test several pasteurized standardized cheeses that deviate from the standards of identity for cheese products. The temporary permit will allow the applicant to evaluate commercial viability of the products and to collect data on consumer acceptance of the products.

DATES: This permit is effective for 15 months, beginning on the date the applicant introduces or causes introduction of the test products into interstate commerce, but not later than July 27, 2023.

FOR FURTHER INFORMATION CONTACT: Marjan Morravej, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: We are giving notice that we have issued a temporary permit to Bongards Creameries. We are issuing the temporary permit in accordance with 21 CFR 130.17, which addresses temporary permits for interstate shipments of experimental packs of food varying from the requirements of standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covers interstate marketing test of several pasteurized standardized cheeses. The test products deviate from the standards of identity for cheese products under 21 CFR 133.167, 133.169, 133.170, 133.171, 133.173, 133.174, 133.175, 133.179, and 133.180. The permit would allow the manufacture of cheese products using extra virgin olive oil, which is not permitted under the standards of identity for these cheese products, as the slice anti-sticking agent. Consumers can distinguish this deviation in manufacturing from standardized cheese through the ingredient list, wherein the ''olive oil'' ingredient would be declared as such according to its common or usual name followed by a means (*e.g.,* an asterisk and footnote) to indicate to the consumer that the ingredient is not found in regular cheese consistent with 21 CFR part 133.

The purpose of the temporary permit is to allow the applicant to market test the products throughout the United States. The permit will allow the applicant to evaluate commercial viability of the products and to collect data on consumer acceptance of the products.

The permit provides for the temporary marketing of a maximum of 20 million pounds (9.09 million kilograms) of the test products. Bongards Creameries will manufacture the test products at its facilities located at 13200 County Rd. 51, Bongards, MN 55368, and 3001 Hwy. 45 Bypass W, Humboldt, TN 38343.

Bongards Creameries will produce, market test, and distribute the test products in any combination of cheese slices including Pasteurized Process American, Cheddar, Pepper Jack, Swiss, Mozzarella, and Provolone, throughout the United States.

Each ingredient used in the food must be declared on the labels as required by 21 CFR part 101. The permit is effective for 15 months, beginning on the date the applicant introduces or causes the introduction of the test products into interstate commerce, but not later than July 27, 2023.

Dated: April 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–08962 Filed 4–27–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Seniors and Disasters

AGENCY: Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Advisory Committee on Seniors and Disasters (NACSD or the Committee) is required by section 2811B of the PHS Act as amended by the Pandemic and All Hazards Preparedness and Advancing Innovation Act (PAHPAIA) and governed by the provisions of the Federal Advisory Committee Act (FACA). The NACSD shall evaluate issues and programs and provide findings, advice, and recommendations to the Secretary of HHS and ASPR to support and enhance all-hazards public health and medical preparedness, response, and recovery aimed at meeting the needs of older adults. The Secretary of HHS has delegated authority to operate the NACSD to ASPR.

DATES: The NACSD will conduct a public meeting (virtual) on May 25, 2023, to discuss, finalize, and vote on an initial set of recommendations to the HHS Secretary and ASPR regarding challenges, opportunities, and priorities for national public health and medical preparedness, response, and recovery, specific to the needs of older adults in disasters. A more detailed agenda and meeting registration link will be available on the NACSD meeting website located at: *https://www.phe.gov/NACSD.*

ADDRESSES: Members of the public may attend the meeting via a toll-free phone number or Zoom teleconference, which requires pre-registration. The meeting link to pre-register will be posted on *https://www.phe.gov/nacsd.* Members of the public may provide written comments or submit questions for consideration to the NACSD at any time via email to *NACSD@hhs.gov.* Members of the public are also encouraged to provide comments after the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Maxine Kellman, NACSD Designated Federal Officer, Administration for Strategic Preparedness and Response (ASPR), Department of Health and Human Services (HHS), Washington, DC; 202–260–0447, *NACSD@hhs.gov.*

SUPPLEMENTARY INFORMATION: The NACSD invites those who are involved in or represent a relevant industry,

academia, profession, organization, or U.S. state, Tribal, territorial, or local government to request up to four minutes to address the committee live via Zoom. Requests to provide remarks to the NACSD during the public meeting must be sent to *NACSD@hhs.gov* at least 15 days prior to the meeting along with a brief description of the topic. We would specifically like to request inputs from the public on challenges in disaster training, opportunities, and strategic priorities for national public health and medical preparedness, response, and recovery specific to the needs of older adults before, during, and after disasters. Slides, documents, and other presentation material sent along with the request to speak will be provided to the committee members separately. Please indicate additionally whether the presenter will be willing to take questions from the committee members (at their discretion) immediately following their presentation (for up to four additional minutes).

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2023–09006 Filed 4–27–23; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 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; Neurodegeneration: Alzheimer's, Parkinson's, and Related Dementia.

Date: May 9, 2023.

Time: 1:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 1009B, MSC 7850, Bethesda, MD 20892, (301) 435–1203, *laurent.taupenot@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: April 24, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–09009 Filed 4–27–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0093]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0069

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 30, 2023.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2023–0093]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2023–0093], and must be received by May 30, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0041.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (88 FR 7100, February 2, 2023) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 1625–0069.

Summary: This collection requires the master of a vessel to provide information that details the vessel operator's ballast water management efforts.

Need: The information is needed to ensure compliance with 33 U.S.C. 1251 and the requirements in 33 CFR part 151, subparts C and D regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. The information is also used for research and periodic reporting to Congress.

Forms:

- Ballast Water Management Report
- Ballast Water Management (BWM) Equivalent Reporting Program

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 61,819 hours to 87,509 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 7, 2023.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023–09001 Filed 4–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0094]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0041

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before May 30, 2023.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2023–0094]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2023–0094], and must be received by May 30, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0041.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (88 FR 6291, January 31, 2023) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates.

OMB Control Number: 1625–0041.

Summary: Required by the adoption of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and other international treaties, these certificates and documents are evidence of compliance for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in a foreign port.

Need: Compliance with treaty requirements aids in the prevention of pollution from ships.

Forms:

- CG–5352, International Oil Pollution Prevention Certificate
- CG–5352A, Form A Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate)
- CG–5352B, Form B Supplement to the International Oil Pollution Prevention Certificate (IOPP Certificate)
- CG–6047, International Sewage Pollution Prevention Equivalency Certificate
- CG–6047A, Statement of Voluntary Compliance for Sewage Pollution Prevention
- CG–6056, International Air Pollution Prevention Certificate
- CG–6056A, Supplement to International Air Pollution Prevention Certificate
- CG–6056B, Statement of Voluntary Compliance for Annex VI of MARPOL 73/78
- CG–6056C, Supplement to Statement of Voluntary Compliance for Annex VI of MARPOL 73/78
- CG–6057, Statement of Voluntary Compliance
- CG–6059, International Anti-Fouling Systems Certificate
- CG–6059A, Record of Anti-Fouling Systems
- CG–6060, International Energy Efficiency (IEE) Certificate
- CG–6060A, Supplement to the International Energy Efficiency Certificate (IEE Certificate)
- CG–9191, International Ballast Water Management Certificate (Statement of Voluntary Compliance)
- CG–16478, International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance)

Why is the Coast Guard proposing to add a new form: The Coast Guard is adding an optional form CG–16478 to provide U.S. vessel owners and operators a way to document equivalent compliance with the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (Hong Kong (HK) Convention). The form may aid a U.S. vessel during a foreign Port State Control boarding.

Respondents: Owners, operators, or masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 2,993 hours to 4,350 hours, due to an increase in the estimated number of responses. In addition, the estimated burden has increased by 19 hours, due to a new optional form—the International Certificate on Inventory of Hazardous Materials (Statement of Voluntary Compliance) (form CG–16478). The total estimated burden is 4,369 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 7, 2023.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023–09002 Filed 4–27–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0121]

Trusted Traveler Programs and U.S. APEC Business Travel Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than May 30, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP

National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 33178) on June 01, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Trusted Traveler Programs and U.S. APEC Business Travel Card.

OMB Number: 1651–0121.

Form Number: 823S (SENTRI) and 823F (FAST).

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Individuals and Businesses.

Abstract: This collection of information is for CBP's Trusted Traveler Programs including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows dedicated processing at specified southwest land border ports of entry; the Free and Secure Trade program (FAST), which provides dedicated processing for known, low-risk commercial drivers; and Global Entry (GE) which allows pre-approved, low-risk, air travelers dedicated processing clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers dedicated processing into the United States. The benefit to the traveler is less time spent in line waiting to be processed. These Trusted Traveler programs are provided for in 8 CFR 235.7 and 235.12.

This information collection also includes the U.S. APEC Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-track immigration lanes at airports in the 20 other Asia-Pacific Economic Cooperation (APEC) member countries. This program is mandated by the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011, Public Law 112–54 and provided for by 8 CFR 235.13.

These collections of information include the data collected on the applications and kiosks for these programs. Applicants may apply to participate in these programs by using the Trusted Traveler Program Systems website (TTP) at *https://ttp.cbp.dhs.gov/* or at Trusted Traveler Enrollment Centers.

After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-serve inspection process using a Global Entry kiosk, which are being transitioned to Global Entry (GE) Portals. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States. When using the Global Entry kiosks, participants are required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

Proposed Changes

CBP will be updating the Trusted Travel Programs to align with the U.S. Department of State's Passport Options: CBP will modify the Trusted Traveler Program application by adding a third gender marker, ''X'' for applicants identifying as non-binary, intersex, and/ or gender non-conforming (in addition to the existing ''male and ''female'' gender markers). The ''X'' marker will be categorized as ''Unspecified or Another Gender Identity'', in the document sections of the electronic Trusted Traveler Programs application.

In addition, coinciding with agency wide efforts to reduce burden on the public, CBP's new Global Entry (GE) Portals are replacing legacy kiosks, enabling quicker, touchless processing for participants by the end of FY 23.

Type of Information Collection: SENTRI (823S).

Estimated Number of Respondents: 276,579.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 276,579.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 185,308.

Type of Information Collection: FAST (823F).

Estimated Number of Respondents: 20,805.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 20,805.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 13,939.

Type of Information Collection: Global Entry.

Estimated Number of Respondents: 1,392,862.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,392,862.

Estimated Time per Response: 40 minutes (0.67 hours).

Estimated Total Annual Burden Hours: 933,217.

Type of Information Collection: ABTC.

Estimated Number of Respondents: 9,858.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 9,858.

Estimated Time per Response: 10 minutes (0.17 hours).

Estimated Total Annual Burden Hours: 1,676.

Type of Information Collection: Global Entry (GE) Portals.

Estimated Number of Respondents: 10,275,367.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 10,275,367.

Estimated Time per Response: 5 seconds (0.00138889 hours).

Estimated Total Annual Burden Hours: 14,271.

Dated: April 25, 2023.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2023–09024 Filed 4–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Change to the Parole Process for Haitians

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security has authorized a change to the Parole Process for Haitians that the U.S. Department of Homeland Security (DHS) described in a **Federal Register** notice published on January 9, 2023. The change provides that those who have been interdicted at sea after April 27, 2023 will be ineligible for the announced parole process.

DATES: DHS will begin applying this amendment April 29, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On January 9, 2023, DHS published a notice titled *Implementation of a Parole Process for Haitians. See* 88 FR 1243. That notice describes a new effort designed to respond to and protect against a significant increase in the number of Haitian nationals crossing the Southwest Border (SWB) without authorization, as the U.S. Government continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by irregular migration. Haitians who do not avail themselves of this parole process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to return or removal. DHS implemented the parole process to allow certain Haitian nationals and their immediate family members to be considered on a case-by-case basis for parole and, if granted, lawfully enter the United States in a safe and orderly manner.

As described in the January 2023 notice, to be eligible, individuals must: (1) have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period; (2) pass national security and public safety vetting; (3) fly at their own expense to an interior POE, rather than entering at a land POE; and (4) possess a valid, unexpired passport. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into Mexico or Panama after January 9, 2023 (the date of the notice's publication); have entered unauthorized into the United States between POEs after January 9, 2023 (except for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process); or are otherwise deemed not to merit a favorable exercise of discretion.

The parole process for Haitians is intended to enhance border security by responding to and protecting against a significant increase of irregular migration by Haitians to the United States via dangerous routes that pose serious risks to migrants' lives and safety, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

II. Amendment

In response to the increasing number of Haitians traveling to the United States by sea without authorization through January 2023, and likelihood of another record level of interdictions this fiscal year (FY), DHS is announcing an amendment to the eligibility criteria announced in the January 9, 2023 notice [1] to make individuals who have been interdicted at sea [2] after April 27, 2023 ineligible for the parole process. The policy announced in this notice is consistent with the policy and justification described in the January 9, 2023 notice, including the justification for the parole process and description of the multiple exceptions to notice-and-comment rulemaking requirements applicable to this process. DHS incorporates those justifications here by reference as appropriate. This notice makes one update to the eligibility criteria for the parole process.

A. Impact of Cuba, Haiti, Nicaragua, and Venezuela Enforcement Processes

Parole processes established for nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV) and their immediate family members have significantly reduced SWB encounters. Following the announcement of the CHNV parole processes, DHS has seen a drastic decrease in the number of Cubans, Haitians, Nicaraguans, and Venezuelans encountered at the SWB. In fact, DHS encountered 128,410 noncitizens who entered between POEs along the SWB in January 2023, which is the lowest monthly SWB encounters total since February 2021.[3] Encounters of CHNV nationals between POEs at the SWB declined from a 7-day average of 1,231 on the day of the announcement on January 5, to 35 on January 31—a drop of 97 percent in just over three weeks.[4] Those trends have endured with a daily average of 46 encounters of CHNV nationals between POEs at the SWB during the last seven days of February 2023.[5] The reduction occurred even as encounters of other noncitizens began to rebound from their typical seasonal decline.[6] The data continue to underscore and support the notion that when there is a safe and orderly way to come to the United States, coupled with consequences for those who do not avail themselves of such established processes, people are less inclined to attempt the dangerous, and at times, deadly, journey to our borders, and less likely to put their lives in the hands of smugglers.

B. Maritime Migration Continues To Increase, With Devastating Consequences for Migrants

While DHS continues to see a meaningful reduction in encounters of CHNV nationals across the SWB following the announcement of the CHNV parole processes, maritime interdictions of Cuban and Haitian nationals in the Caribbean have increased in recent FYs and persist at high levels. Total interdictions at sea increased by 502 percent between FY 2020 (2,079) and FY 2022 (12,521). Interdictions continued to rise in FY 2023 with 7,402 through January, almost 60 percent of the total in FY 2022 within four months. Maritime migration from Haiti more than tripled in FY 2022, with a total of 4,025 Haitian nationals interdicted at sea compared to 1,205 in FY 2021 and 398 in FY 2020. In the first four months of FY 2023, Haitian interdictions are almost 50 percent of the Haitian FY 2022 total, comprising a

[1] Implementation of a Parole Process for Haitians, 88 FR 1243 (Jan. 9, 2023).

[2] For purposes of this notice, ''interdicted at sea'' refers to migrants directly interdicted by the U.S. Coast Guard from vessels subject to U.S. jurisdiction or vessels without nationality, or migrants transferred to the U.S. Coast Guard.

[3] U.S. Customs and Border Protection, *CBP Releases January 2023 Monthly Operational Update,* Feb. 10, 2023, *https://www.cbp.gov/newsroom/national-media-release/cbp-releases-january-2023-monthly-operational-update.*

[4] DHS Office of Immigration Statistics (OIS) analysis of OIS Persist Dataset based on data through January 31, 2023.

[5] OIS analysis of CBP Unified Immigration Portal (UIP) data pulled March 2, 2023.

[6] DHS, *Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures,* Jan. 25, 2023, *https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures.*

quarter of all FY 2023 interdictions at sea.[7]

U.S. Border Patrol (USBP) apprehensions of Haitian nationals in southeast coastal sectors [8] grew to 1,840 in FY 2022 compared to 601 in FY 2021, an increase of over 200 percent. In FY 2023 to date, there have been 656 apprehensions of Haitian nationals by USBP in southeast coastal sectors, 36 percent of FY 2022 total Haitian apprehensions.[9]

The U.S. Coast Guard (USCG) has been challenged with several large group interdictions of Haitians in recent months. In one instance on January 22, 2023, the USCG encountered a sail freighter suspected of illegally transporting migrants with nearly 400 Haitians aboard, necessitating repatriations of eligible individuals back to the Bahamas.[10] Days later on January 26, the USCG interdicted and repatriated another 309 Haitians to Haiti.[11] USCG encountered yet another large group of Haitians on February 15, repatriating 311 Haitian migrants from that encounter [12] and another group of 206 Haitians were repatriated on March 2 following two successive encounters.[13] Interdicting Haitian sail freighters poses unique challenges to Coast Guard crews and migrants. These types of vessels are often overloaded with more than 150 migrants onboard, including small children. Because these vessels do not have sufficient safety equipment, including life jackets, emergency locator beacons, or life rafts in the event of an emergency, the risk in the event that these vessels overturn or sink increases, in a situation where there could be hundreds of noncitizens in the water, who may not know how to swim. Often times, noncitizens interdicted on these vessels have been at sea for several days, are dehydrated, need medical attention, or are otherwise experiencing elevated levels of stress. These factors increase the risk to Coast Guard personnel who rescue these migrants from these vessels because the number of migrants outnumber Coast Guard crews. Coast Guard encounters with sail freighters are not uncommon, but because of their capacity to carry several hundred migrants, they can exceed the holding capacity of Coast Guard cutters patrolling southeastern maritime smuggling vectors, increasing the risk not only to the migrants, but cutter crews as well.

While interdictions in February 2023 did ebb from the January peak so far this FY, the reduction to a combined 601 Haitian Coast Guard interdictions and USBP coastal apprehensions was not the same reduction in flows DHS observed along the SWB.[14] DHS assesses that in the Caribbean, the weather and migrant knowledge of increased law enforcement presence played a significant role in this reduced maritime movement. Through much of February, weather conditions were unfavorable for maritime ventures, particularly on smaller vessels. However, DHS assess this was only temporary. In the final days of February and early days of March 2023, DHS saw a return to multiple interdictions per day. Increasing levels of maritime interdictions put lives at risk and stress DHS's resources, and the increase in migrants taking to sea, under dangerous conditions, has led to devastating consequences.

Human smugglers and irregular migrant populations continue to use unseaworthy, overly crowded vessels, piloted by inexperienced mariners, without any safety equipment—including but not limited to, personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. In FY 2022, the USCG recorded 107 noncitizen deaths, including those presumed dead, as a result of irregular maritime migration. In January 2022, the USCG located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor, who indicated there were 34 others on the vessel who were not in the vicinity of the capsized vessel and the survivor.[15] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants, while the others were presumed lost at sea.[16] In November 2022, USCG and U.S. Customs and Border Protection (CBP) rescued over 180 people from an overloaded boat that became disabled off of the Florida Keys.[17] They pulled 18 Haitian migrants out of the sea after they became trapped in ocean currents while trying to swim to shore.[18]

The International Organization for Migration's (IOM) Missing Migrants Project reported at least 321 documented deaths and disappearances of migrants throughout the Caribbean in 2022, signaling the highest recorded number since they began tracking such events in 2014.[19] Most of those who perished or went missing in the Caribbean were from Haiti and Cuba.[20] This data emphasizes a tragic 78% overall increase over the 180 deaths in the Caribbean documented in 2021, underscoring the perils of the journey.[21]

The U.S. Government's response to maritime migration in the Caribbean region is governed by Executive Orders, Presidential Directives, and resulting framework and plans that outline interagency roles and responsibilities. Homeland Security Task Force-Southeast (HSTF–SE) is primarily responsible for DHS's response to maritime migration in the Caribbean Sea and the Straits of Florida. Operation Vigilant Sentry is the DHS interagency operational plan for integrated operations to address and mitigate the threat of a maritime migration in the Caribbean Sea and the Straits of Florida.[22] The primary objectives of HSTF–SE are to protect the safety and security of the United States, uphold U.S. humanitarian principles, maintain the integrity of the U.S. immigration

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[7] OIS analysis of USCG data.

[8] Includes Miami, Florida; New Orleans, Louisiana; and Ramey, Puerto Rico sectors where all apprehensions are land apprehensions not maritime.

[9] OIS analysis of OIS Persist Dataset based on data through January 31, 2023.

[10] Goodhue, David and Jacqueline Charles, Miami Herald, *Coast Guard stops boat with 400 Haitians off the Bahamas and likely headed to Florida,* Jan. 23, 2023, *https://www.miamiherald.com/news/nation-world/world/americas/haiti/article271514157.html#:~:text=Close%20to%20400%20people%20crowd%20the%20deck%20of,island%20in%20the%20Bahamas%2C%20according%20to%20Bahamian%20officials.*

[11] USCG, *Coast Guard Repatriates 309 People to Haiti,* Jan. 31, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3281802/coast-guard-repatriates-309-people-to-haiti.*

[12] USCG, *Coast Guard Repatriates 311 People to Haiti,* February 20, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3302743/coast-guard-repatriates-311-people-to-haiti/.*

[13] USCG, *Coast Guard Repatriates 206 People to Haiti,* March 2, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3314530/coast-guard-repatriates-206-people-to-haiti/.*

[14] OIS analysis of USCG data and UIP data pulled March 2, 2023.

[15] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[16] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[17] Ashley Cox, CBS News CW44 Tampa, More than 180 people rescued from overloaded vessel in Florida Keys, Nov. 22, 2022, *https://www.cbsnews.com/tampa/news/more-than-180-people-rescued-from-overloaded-vessel-in-florida-keys/.*

[18] *Id.*

[19] IOM, *Missing Migrants in the Caribbean Reached a Record High in 2022,* Jan. 24, 2023, *https://www.iom.int/news/missing-migrants-caribbean-reached-record-high-2022.*

[20] *Id.*

[21] *Id.*

[22] Homeland Security Task Force—Southeast, published through the U.S. Embassy in Cuba, *Homeland Security Task Force Southeast partners increase illegal migration enforcement patrols in Florida Straits, Caribbean,* Sept. 6, 2022, *https://cu.usembassy.gov/homeland-security-task-force-southeast-partners-increase-illegal-migration-enforcement-patrols-in-florida-straits-caribbean/.*

system, prevent loss of life at sea and to deter and dissuade maritime migration through mobilizing DHS resources, reinforced by other federal, state, and local assets and capabilities.

The USCG supports HSTF–SE and views its migrant interdiction mission as a humanitarian effort to rescue those taking to the sea and encourage noncitizens to pursue lawful pathways to enter the United States. By allocating additional assets to migrant interdiction operations and to prevent conditions that could lead to maritime mass migration, the USCG assumes certain operational risk to other statutory missions. Some USCG assets were diverted from other key mission areas, including counter-drug operations, protection of living marine resources, and support for shipping navigation. Through a reduction of maritime migration, USCG would in turn reduce the operational risk to its other statutory missions.

C. Ineligibility Criteria for Maritime Interdictions

In response to the increase in maritime migration and interdictions, and to disincentivize migrants from attempting the dangerous journey to the United States by sea, DHS will make individuals who have been interdicted at sea after April 27, 2023 ineligible for the parole process for Haitians. Further, DHS expects this change in eligibility criteria to materially reduce the number of maritime interdictions, by incentivizing migrants to use safe and orderly means to access the United States.

Migrants who take to the sea are putting their lives at incredible risk. The goal of this change, like the parole process for Haitians more broadly, is to save lives and undermine the profits and operations of the dangerous smuggling networks and transnational criminal organizations that callously prioritize their profits over the lives and safety of the people they transport and traffic. The parole process for Haitians will continue to incentivize intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey by sea.

III. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process discussed in this notice involves two collections of information, both of which have previously been approved under emergency processing. The collections are as follows:

- USCIS, Form I–134A, *Online Request to be a Supporter and Declaration of Financial Support,* OMB control number 1615–0157.
- CBP, *Advance Travel Authorization,* OMB control number 1651–0143.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–09014 Filed 4–27–23; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Change to the Parole Process for Cubans

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security has authorized a change to the Parole Process for Cubans that the U.S. Department of Homeland Security (DHS) described in a **Federal Register** notice on January 9, 2023. The change provides that those who have been interdicted at sea after April 27, 2023 will be ineligible for the announced parole process.

DATES: DHS will begin applying this amendment on April 28, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Delgado, Acting Director, Border and Immigration Policy, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445; telephone (202) 447–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On January 9, 2023, DHS published a notice titled *Implementation of a Parole Process for Cubans. See* 88 FR 1266. That notice describes a new effort to address the increasing number of encounters of Cuban nationals at the Southwest Border (SWB) and at sea, which had reached record levels over the six months preceding the announcement. Cubans who do not avail themselves of this parole process, and instead enter the United States without authorization between ports of entry (POEs), generally are subject to return or removal. DHS implemented the parole process to allow certain Cuban nationals and their immediate family members to be considered on a case-by-case basis for parole and, if granted, lawfully enter the United States in a safe and orderly manner. As described in the January 2023 notice, to be eligible, individuals must: (1) have a supporter in the United States who agrees to provide financial support for the duration of the beneficiary's parole period; (2) pass national security and public safety vetting; (3) fly at their own expense to an interior POE, rather than entering at a land POE; and (4) possess a valid, unexpired passport. Individuals are ineligible for this process if they have been ordered removed from the United States within the prior five years; have entered unauthorized into Mexico or Panama after January 9, 2023 (the date of the notice's publication); have entered the United States without authorization between POEs after January 9, 2023 (except for individuals permitted a single instance of voluntary departure or withdrawal of their application for admission to still maintain their eligibility for this process); or are otherwise deemed not to merit a favorable exercise of discretion.

The parole process for Cubans is intended to enhance border security by addressing the number of encounters of Cuban nationals at the SWB and at sea, which reached record levels in recent months, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

II. Amendment

In response to the increasing number of Cubans traveling to the United States by sea without authorization through January 2023, and the likelihood of another record number of interdictions this fiscal year (FY), DHS is announcing an amendment to the eligibility criteria announced in the January 9, 2023 notice [1] to make individuals who have been interdicted at sea [2] after April 27, 2023 ineligible for the parole process. The policy announced in this notice is consistent with the policy and justification described in the January 9, 2023 notice, including the justification for the parole process and description of the multiple exceptions to notice-and-comment rulemaking requirements applicable to this process. DHS incorporates those justifications here by

[1] Implementation of a Parole Process for Cubans, 88 FR 1266 (Jan. 9, 2023).

[2] For purposes of this notice, ''interdicted at sea'' refers to migrants directly interdicted by the U.S. Coast Guard from vessels subject to U.S. jurisdiction or vessels without nationality, or migrants transferred to the U.S. Coast Guard.

reference as appropriate. This notice makes one update to the eligibility criteria for the parole process.

A. Impact of Cuba, Haiti, Nicaragua, and Venezuela Enforcement Processes

Parole processes established for nationals of Cuba, Haiti, Nicaragua, and Venezuela (CHNV) and their immediate family members have significantly reduced SWB encounters. Following the announcement of the CHNV parole processes, DHS has seen a drastic decrease in the number of Cubans, Haitians, Nicaraguans, and Venezuelans encountered at the SWB. In fact, DHS encountered 128,410 noncitizens who entered between POEs along the SWB in January 2023, which is the lowest monthly SWB encounters total since February 2021.[3] Encounters of CHNV nationals between POEs at the SWB declined from a 7-day average of 1,231 on the day of the announcement on January 5th, to 35 on January 31—a drop of 97 percent in just over three weeks.[4] Those trends have continued with a daily average of 46 encounters of CHNV nationals between POEs at the SWB during the last seven days of February 2023.[5] This reduction occurred even as encounters of other noncitizens began to rebound from the typical seasonal decline.[6] The data continues to underscore and support the notion that when there is a safe and orderly way to come to the United States, coupled with consequences for those who do not avail themselves of such established processes, people are less inclined to attempt the dangerous, and at times, deadly, journey to our borders, and less likely to put their lives in the hands of smugglers.

B. Maritime Migration Continues To Increase, With Devastating Consequences for Migrants

While DHS continues to see a meaningful reduction in encounters of CHNV nationals across the SWB following the announcement of the CHNV parole processes, maritime interdictions of Cuban and Haitian nationals in the Caribbean have increased in recent fiscal FYs and persist at high levels. Total interdictions at sea increased by 502 percent between FY 2020 (2,079) and FY 2022 (12,521). Interdictions continue to rise in FY 2023 with 7,402 through January, almost 60 percent of the total in FY 2022 within four months. Maritime migration from Cuba increased by nearly 600 percent in FY 2022, with 5,740 Cuban nationals interdicted at sea, compared to 827 in FY 2021. In the first four months of FY 2023, Cuban interdictions are over 80 percent of the Cuban FY 2022 total, comprising 65 percent of all FY 2023 interdictions at sea.[7]

Apprehensions of Cuban nationals in southeast coastal sectors by U.S. Border Patrol have been increasing rapidly.[8] There were 2,675 Cuban apprehensions in FY 2022, an 11-fold increase over the FY 2021 total of 239 apprehensions. The first four months of FY 2023 have already surpassed FY 2022 with 4,273 apprehensions of Cuban nationals in southeast coastal sectors.[9]

The U.S. Coast Guard (USCG) has interdicted and repatriated Cubans in recent months. On January 12, 2023, USCG repatriated 177 Cubans from 7 separate interdictions.[10] USCG repatriated an additional 67 Cubans between February 23–24 following prior interdictions.[11]

While maritime interdictions of Cuban nationals declined somewhat in February, DHS assesses that in the Caribbean, the weather and migrant knowledge of increased law enforcement presence played a significant role in this reduced maritime movement. Through much of February, weather conditions were unfavorable for maritime ventures, particularly on smaller vessels. However, DHS assesses this was only temporary. In the final days of February and early days of March 2023, DHS saw a return to multiple interdictions per day. The growing numbers of migrants taking to sea under dangerous conditions put lives at risk and places stress on DHS's resources.

Human smugglers and irregular migrant populations continue to use unseaworthy, overly crowded vessels, piloted by inexperienced mariners, without any safety equipment—including but not limited to, personal flotation devices, radios, maritime global positioning systems, or vessel locator beacons. In FY 2022, the USCG recorded 107 noncitizen deaths, including those presumed dead, as a result of irregular maritime migration. In January 2022, the USCG located a capsized vessel with a survivor clinging to the hull. USCG crews interviewed the survivor, who indicated there were 34 other individuals on the vessel who were not in the vicinity of the capsized vessel and the survivor.[12] The USCG conducted a multi-day air and surface search for the missing migrants, eventually recovering five deceased migrants, while the others were presumed lost at sea.[13] In November 2022, USCG and U.S. Customs and Border Protection (CBP) rescued over 180 people from an overloaded boat that became disabled off the Florida Keys.[14]

The International Organization for Migration's (IOM) Missing Migrants Project reported at least 321 documented deaths and disappearances of migrants throughout the Caribbean in 2022, signaling the highest recorded number since IOM began tracking such events in 2014 and a 78% overall increase over the 180 documented cases in 2021.[15] Most of those who perished or went missing in the Caribbean were from Haiti and Cuba.[16]

The U.S. Government's response to maritime migration in the Caribbean region is governed by Executive Orders, Presidential Directives, and resulting framework and plans that outline interagency roles and responsibilities. Homeland Security Task Force-Southeast (HSTF–SE) is primarily responsible for DHS's response to

[3] U.S. Customs and Border Protection, *CBP Releases January 2023 Monthly Operational Update,* Feb. 10, 2023, *https://www.cbp.gov/newsroom/national-media-release/cbp-releases-january-2023-monthly-operational-update.*

[4] DHS Office of Immigration Statistics (OIS) analysis of OIS Persist Dataset based on data through January 31, 2023.

[5] OIS analysis of CBP Unified Immigration Portal (UIP) data pulled on March 2, 2023.

[6] DHS, *Unlawful Southwest Border Crossings Plummet Under New Border Enforcement Measures,* Jan. 25, 2023, *https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures.*

[7] OIS analysis of USCG data.

[8] Includes Miami, Florida; New Orleans, Louisiana; and Ramey, Puerto Rico sectors where all apprehensions are land apprehensions not maritime.

[9] OIS analysis of OIS Persist Dataset based on data through January 31, 2023.

[10] USCG, *Coast Guard Repatriates 177 People to Cuba,* Jan. 12, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3265898/coast-guard-repatriates-177-people-to-cuba/.*

[11] USCG, *Coast Guard Repatriates 29 People to Cuba,* Feb. 23, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3306722/coast-guard-repatriates-29-people-to-cuba/;* USCG, *Coast Guard Repatriates 38 People to Cuba,* Feb. 24, 2023, *https://www.news.uscg.mil/Press-Releases/Article/3306850/coast-guard-repatriates-38-people-to-cuba/.*

[12] Adriana Gomez Licon, Associated Press, Situation 'dire' as Coast Guard seeks 38 missing off Florida, Jan. 26, 2022, *https://apnews.com/article/florida-capsized-boat-live-updates-f251d7d279b6c1fe064304740c3a3019.*

[13] Adriana Gomez Licon, Associated Press, Coast Guard suspends search for migrants off Florida, Jan. 27, 2022, *https://apnews.com/article/florida-lost-at-sea-79253e1c65cf5708f19a97b6875ae239.*

[14] Ashley Cox, CBS News CW44 Tampa, More than 180 people rescued from overloaded vessel in Florida Keys, Nov. 22, 2022, *https://www.cbsnews.com/tampa/news/more-than-180-people-rescued-from-overloaded-vessel-in-florida-keys/.*

[15] IOM, *Missing Migrants in the Caribbean Reached a Record High in 2022,* Jan. 24, 2023, *https://www.iom.int/news/missing-migrants-caribbean-reached-record-high-2022.*

[16] *Id.*

maritime migration in the Caribbean Sea and the Straits of Florida. Operation Vigilant Sentry is the DHS interagency operational plan for integrated operations to address and mitigate the threat of a maritime mass migration in the Caribbean Sea and the Straits of Florida.[17] The primary objectives of HSTF–SE are to protect the safety and security of the United States, uphold U.S. humanitarian principles, maintain the integrity of the U.S. immigration system, prevent loss of life at sea and to deter and dissuade maritime migration through mobilizing DHS resources, reinforced by other federal, state, and local assets and capabilities.

The USCG supports HSTF–SE and views its migrant interdiction mission as a humanitarian effort to rescue those who risk their lives by taking to the sea and encourage noncitizens to pursue legal pathways to enter the United States. By allocating additional assets to migrant interdiction operations and to prevent conditions that could lead to a maritime mass migration, the USCG assumes certain operational risk to other statutory missions. Some USCG assets were reallocated from other key mission areas, including counter-drug operations, protection of living marine resources, and support for shipping navigation. Through a reduction of maritime migration, USCG would in turn reduce the operational risk to its other statutory missions.

C. Ineligibility Criteria for Maritime Interdictions

In response to the increase in maritime migration and interdictions, and to disincentivize migrants from attempting the dangerous journey to the United States by sea, DHS will make individuals who have been interdicted at sea after April 27, 2023 ineligible for the parole process for Cubans. Further, DHS expects this change in eligibility criteria to materially reduce the number of maritime interdictions, by incentivizing migrants to use safe and orderly means to access the United States.

Migrants who take to the sea are putting their lives at incredible risk. The goal of this change, like the parole process for Cubans more broadly, is to save lives at sea and undermine the profits and operations of the dangerous smuggling networks and transnational criminal organizations that callously prioritize their profits over the lives and safety of the people they transport and traffic. The parole process for Cubans will continue to incentivize intending migrants to use a safe and orderly means to access the United States via commercial air flights, thus ultimately reducing the demand for smuggling networks to facilitate the dangerous journey by sea.

[17] Homeland Security Task Force—Southeast, published through the U.S. Embassy in Cuba, *Homeland Security Task Force Southeast partners increase illegal migration enforcement patrols in Florida Straits, Caribbean,* Sept. 6, 2022, *https://cu.usembassy.gov/homeland-security-task-force-southeast-partners-increase-illegal-migration-enforcement-patrols-in-florida-straits-caribbean/.*

III. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process discussed in this notice involves two collections of information, both of which have previously been approved under emergency processing. The collections are as follows:

- USCIS, Form I–134A, *Online Request to be a Supporter and Declaration of Financial Support,* OMB control number 1615–0157.
- CBP, *Advance Travel Authorization,* OMB control number 1651–0143.

More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2023–09013 Filed 4–27–23; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–22]

30-Day Notice of Proposed Information Collection: Enterprise Income Verification (EIV) Systems—Access Authorization Form and Rules of Behavior and User Agreement; OMB Control No.: 2577–0267

AGENCY: Office of Policy Development and Research, Chief Data Officer, 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 an additional 30 days of public comment.

DATES: *Comments Due Date:* May 30, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 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 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *PaperworkReductionActOffice@hud.gov* or telephone 202–402–3400. 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. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 23, 2023 at 88 FR 11467.

A. Overview of Information Collection

Title of Information Collection: EIV System User Access Authorization Form and Rules of Behavior and User Agreement.

OMB Approval Number: 2577–0267.

Type of Request: Revision of currently approved collection.

Form Number: 52676 and 52676I.

Description of the need for the information and proposed use: In accordance with statutory requirements at 5 U.S.C. 552a, as amended (most commonly known as the Federal Privacy Act of 1974), the Department is required to account for all disclosures of information contained in a system of records. Specifically, the Department is required to keep an accurate accounting of the name and address of the person or agency to which the disclosure is made. The Enterprise Income

Verification (EIV) System (HUD/PIH–5) is classified as a System of Records, as initially published on July 20, 2005, in the **Federal Register** at page 41780 (70 FR 41780), and as amended and published on September 1, 2009, in the **Federal Register** on page 45235 (74 FR 45235).

As a condition of granting access to the EIV system, each prospective user of the system must (1) request access to the system; (2) agree to comply with HUD's established rules of behavior; and (3) review and signify their understanding of their responsibilities of protecting data protected under the Federal Privacy Act (5 U.S.C. 522a, as amended). As such, the collection of information about the user and the type of system access required by the prospective user is required by HUD to: (1) identify the user; (2) determine if the prospective user in fact requires access to the EIV system and in what capacity; (3) provide the prospective user with information related to the Rules of Behavior for system usage and the user's responsibilities to safeguard data accessed in the system once access is granted; and (4) obtain the signature of the prospective user to certify the user's understanding of the Rules of Behavior and responsibilities associated with his/her use of the EIV system.

HUD collects the following information from each prospective user: Public Housing Agency (PHA) code, organization name, organization address, prospective user's full name, HUD-assigned user ID, position title, office telephone number, facsimile number, type of work which involves the use of the EIV system, type of system action requested, requested access roles to be assigned to prospective user, public housing development numbers to be assigned to prospective PHA user, and prospective user's signature and date of request. The information is collected electronically and manually (for those who are unable to transmit electronically) via a PDF-fillable or Word-fillable document, which can be emailed, faxed or mailed to HUD. If this information is not collected, the Department will not be in compliance with the Federal Privacy Act and be subject to civil penalties.

ESTIMATE OF THE HOUR OF BURDEN OF THE COLLECTION OF INFORMATION

Information collection	Number of respondents	Frequency of respondents	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52676	13,192	On occasion	13,703	Initial 1/hr, periodic 0.25/hr.	10,754	$25.94	$278,959

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.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–09018 Filed 4–27–23; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1286]

Certain Oil-Vaping Cartridges, Components Thereof, and Products Containing the Same Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337 as to the Asserted Patent Claims; Request for Written Submissions on Issues Under Review and on Remedy, the Public Interest, and Bonding as to the Asserted Trademark

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') of the presiding chief administrative law judge (''CALJ''), finding no violation of section 337 as to the asserted patent claims. On review, the Commission has determined to find no violation of section 337 as to the asserted patent claims. The Commission has determined to review all findings and orders as to Respondent Glo Extracts (''Glo Extracts'') of Los Angeles, California and requests briefing from the parties as set forth below. The Commission has also determined to review all findings related to the asserted trademark. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding as to the asserted trademark, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On November 10, 2021, the Commission instituted this investigation based on a complaint filed by Shenzhen Smoore Technology Limited (''Smoore'' or ''Complainant'') of Shenzhen, China. 86 FR 62567–69 (Nov. 10, 2021). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain oil-vaping cartridges, components thereof, and products containing the same by reason of infringement of one or more of claims 1–3, 5, and 6 of U.S. Patent No. 10,357,623 (''the '623 patent''); claims 1, 2, and 7 of U.S. Patent No. 10,791,762 (''the '762 patent''); claims 1 and 11 of U.S. Patent No. 10,791,763 (''the '763 patent''); and U.S. Registered Trademark No. 5,633,060 (''the '060 mark''). *Id.*

The Commission's notice of investigation named the following entities as respondents: BBTank USA, LLC (''BBTank'') of Lambertville, Michigan; Glo Extracts; *BulkCarts.com* of Canton, Michigan; Greenwave Naturals LLC of Austin, Texas; *BoldCarts.com* of Tempe, Arizona; Bold Crafts, Inc. of Irvine, California; Blinc Group Holdings, LLC of New York, New York; Jonathan Ray Carfield (''Jonathan Carfield''), d/b/a AlderEgo Wholesale, AlderEgo Holdings, Inc. and AlderEgo Group, Limited a/k/a AVD Holdings Limited of Guangdong, China; Hanna Carfield (''Hanna Carfield'') of Tacoma, Washington; Next Level Ventures, LLC (''Next Level Ventures'') of Seattle, Washington; Advanced Vapor Devices, LLC (''AVD'') of Los Angeles, California; *avd710.com* (''*avd710.com*'') of Seattle, Washington; AlderEgo Group Limited (''AEG'') of Hong Kong; A&A Global Imports, Inc. (''A&A Global'') d/b/a Marijuana Packaging of Vernon, California; Bulk Natural, LLC (''Bulk Natural'') d/b/a True Terpenes of Portland Oregon; Brand King, LLC (''Brand King'') of Sacramento, California; ZTCSMOKE USA Inc. (''ZTCSMOKE'') of Niceville, Florida; *headcandysmokeshop.com* of Richmond, BC Canada and Head Candy Enterprise Ltd. of Vancouver. BC Canada (together ''Head Candy'') ; Green Tank Technologies Corp. of Toronto, ON Canada; Cannary Packaging Inc (''Cannary Packaging'') of Kelowna, BC Canada; Cannary LA (''Cannary LA'') of Signal Hill, California; *dcalchemy.com* and DC Alchemy, LLC (together ''Alchemy'') both of Phoenix, Arizona; *Cartridgesforsale.com* of Ypsilanti, Michigan; HW Supply, LLC of Ypsilanti, Michigan; International Vapor Group, LLC (''International Vapor'') of Miami Lakes, Florida; Obsidian Supply, Inc. of Irvine, California; *Ygreeninc.com* and Ygreen Inc. (together (''Ygreen'') both of Walnut, California; Atmos Nation LLC (''Atmos'') of Davie, Florida; *shopbvv.com* of Naperville, Illinois; Best Value Vacs, LLC (''Best Value Vacs'') of Naperville, Illinois; *Royalsupplywholesale.com* (''Royalsupplywholesale'') of San Francisco, California; *Customcanabisbranding.com* (''Customcanabisbranding'') of San Francisco, California; CLK Global, Inc. (''CLK'') of San Francisco, California; *iKrusher.com,* of Arcadia, California (''iKrusher''); and The Calico Group Inc. of Austin, Texas. The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation. *Id.*

On December 16, 2021, the CALJ issued an ID granting a motion to terminate the investigation as to Head Candy based upon a consent order. Order No. 9 (Dec. 16, 2021), *unreviewed by* Comm'n Notice (Jan. 10, 2022). On December 20, 2021, the CALJ issued an ID granting a motion to terminate the investigation as to ZTCSMOKE based upon a consent order. Order No. 10 (Dec. 20, 2021), *unreviewed by* Comm'n Notice (Jan. 11, 2022). On December 21, 2021, the CALJ issued IDs granting motions to terminate the investigation as to Alchemy, CLK, Royalsupplywholesale, and Customcanabisbranding based upon consent orders. Order Nos. 12 and 13 (Dec. 21, 2021), *unreviewed by* Comm'n Notice (Jan. 11, 2022). On January 10, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to Ygreen based upon a consent order. Order No. 15 (Jan. 10, 2022), *unreviewed by* Comm'n Notice (Feb. 4, 2022). On January 18, 2022, the CALJ issued IDs granting motions to terminate the investigation as to Cannary Packaging and Cannary LA based upon consent orders. Order Nos. 16 and 17 (Jan. 18, 2022), *unreviewed by* Comm'n Notice (Feb. 15, 2022).

On January 21, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to International Vapor based upon withdrawal of allegations in the complaint as to International Vapor. Order No. 17 (Jan. 21, 2022), *unreviewed by* Comm'n Notice (Feb. 15, 2022). On February 23, 2022, the CALJ issued an ID granting a motion to (1) amend the complaint and notice of investigation to change the name of Respondents *BoldCarts.com* and Bold Crafts, Inc. to Bold Crafts, LLC d/b/a Bold Carts and *BoldCarts.com* (''Bold Crafts''); (2) amend the complaint and notice of investigation to change the name of Respondent Green Tank Technologies Corp. to Greentank Technologies Corp. (''Greentank''); (3) amend the complaint and notice of investigation to change the name of Respondent Blinc Group Holdings, LLC to The Blinc Group Inc.; and (4) terminate the investigation as to BBTank based upon withdrawal of allegations in the complaint as to BBTank. Order No. 20 (Feb. 23, 2022), *unreviewed by* Comm'n Notice (Mar. 18, 2022).

On June 7, 2022, the CALJ issued an ID granting a motion to terminate the investigation as to Best Value Vacs and *shopbvv.com* based upon settlement. Order No. 29 (June 7, 2022), *unreviewed by* Comm'n Notice (June 22, 2022). On July 5, 2022, the CALJ issued IDs granting motions to terminate the investigation as to Atmos, AEG, Hanna Carfield, and Jonathan Carfield based upon settlement. Order Nos. 33 and 34 (July 5, 2022), *unreviewed by* Comm'n Notice (Aug. 2, 2022).

The CALJ held an evidentiary hearing from August 1–August 5, 2022 and received post-hearing briefs thereafter.

On January 23, 2023, the CALJ issued an ID finding the following respondents in default: *Cartridgesforsale.com;* HW Supply, LLC; Obsidian Supply, Inc.; *BulkCarts.com;* and Greenwave Naturals LLC. Order No. 42 (Jan. 23, 2023), *unreviewed by* Comm'n Notice (Feb. 14, 2023). The CALJ declined to find respondent Glo Extracts in default because he found that Glo Extracts was not properly served with the show-cause order. ID at 8.

On January 31, 2023, the CALJ issued an ID granting a motion to terminate the investigation as to The Calico group based upon settlement and a consent order. Order No. 46 (Jan. 31, 2023), *unreviewed by* Comm'n Notice (Mar. 3, 2023). Non-defaulting respondents remaining in the investigation are: The Blinc Group Inc.; Bold Crafts; Greentank; iKrusher; Next Level Ventures; AVD; *avd710.com;* Bulk Natural; Brand King; and A&A Global (collectively, the ''Respondents'').

On February 1, 2023, the CALJ issued the final ID finding no violation of section 337. The ID found that by appearing and participating in the investigation, the participating parties (The Blinc Group Inc.; Bold Crafts, LLC; Greentank Technologies Corp.; iKrusher, Inc.; Next Level Ventures, LLC; Bulk Natural, LLC; Brand King, LLC; A&A Global Imports, Inc.) consented to personal jurisdiction at the Commission. ID at 19. The ID further found that the importation requirement under 19 U.S.C. 1337(a)(1)(B) is satisfied

and that the Commission has *in rem* jurisdiction over the accused products. *Id.* at 19–20 (citing JX–0359C ¶ 3, JX–0375C (Godlewski Depo.) at 49:5–51:8, JX–0381C ¶ 3, JX–0380C (Yu Depo.) 47:14–48:1; 48:11–17, JX–0523C ¶ 3). The ID found that Smoore failed to show that the accused products infringe the asserted claims of the '623, '762, and '763 patents. ID at 55–75. The ID also found that the respondents failed to show that the asserted claims are invalid in view of the cited prior art. ID at 75–89. The ID further found that the asserted claims of the '623 patent are invalid as indefinite under 35 U.S.C. 112 and are unenforceable due to inequitable conduct. ID at 27–29, 89–94. Finally, the ID found that Smoore failed to prove the existence of a domestic industry that practices the Asserted Patents as required by 19 U.S.C. 1337(a)(2). *Id.* at 55–75, 94–102.

The ID included the CALJ's recommended determination on remedy and bonding (''RD''). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders. ID/RD at 105–108. The RD also recommended imposing no bond for covered products imported during the period of Presidential review because Smoore failed to meet its burden to establish a need for a bond. *Id.* at 108–09.

On February 13, 2023, Smoore filed a petition for review of the ID and Respondents filed a contingent petition for review of the ID. On February 21, 2023, the parties, including OUII, filed responses to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties' submissions to the ALJ, the petitions for review, and the responses thereto, the Commission has determined to review in part the final ID and orders issued in this investigation. Specifically, the Commission has determined to review the ID's domestic industry findings, all findings related to the asserted trademark, and all findings and orders as to Respondent Glo Extracts. On review, the Commission has determined to affirm the ID's finding that Smoore failed to show that its alleged domestic industry products practice any of the asserted patents. Thus, Smoore has necessarily failed to show the existence of a domestic industry under section 337(a)(3) as to the asserted patents and as such the Commission has determined to take no position on the economic prong of the domestic industry requirement related to the asserted patents. Accordingly, the Commission finds no violation with regard to the '623, '762, and '763 patents.

In connection with the '060 mark asserted against the respondents found in default and Glo Extracts, the Commission requests responses from Smoore, Glo Extracts, and OUII to the following questions pertaining to Glo Extracts:

(1) Whether Smoore has been able to serve Glo Extracts with the Amended Complaint and Notice of Investigation, Smoore's motion for summary determination, and any of the Orders from this investigation, including the ALJ's show-cause order;

(2) Smoore shall provide proof of service for any documents successfully served on Glo Extracts, or if unsuccessful, an explanation of its attempts to serve Glo Extracts with those documents, along with supporting evidence, and an explanation of its statement that Glo Extracts ''evaded'' service of the ALJ's show-cause order (*see* Smoore Pet. at 85);

(3) Smoore shall also serve this notice on Glo Extracts and provide proof of service or an explanation (and supporting documentation) why it was unable to serve this notice;

(4) Whether the Commission should terminate the investigation as to Glo Extracts for lack of service or whether the Commission should find Glo Extracts in default and issue a remedy as to it.

(5) Whether the Commission should find Glo Extracts in violation of Section 337, if it is not found in default, and issue a remedy against it.

All assertions of facts concerning service, attempts to serve, and evasion of service shall be under oath in the form of an affidavit or declaration.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia,* (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In particular, the Commission requests that the parties respond to the statements on the public interest received from the various third parties.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The specified parties are requested to file written submissions on the questions identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. Complainant is also requested to identify and explain, from the record, articles that it contends are ''components thereof and products containing the same'' of the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 86 FR 62567–69. Failure to provide this information may result in waiver of any remedy directed to ''components thereof and products

containing the same'' the subject products, in the event any violation may be found.

The initial written submissions and proposed remedial orders must be filed no later than close of business on May 8, 2023. Reply submissions must be filed no later than the close of business on May 15, 2023. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 25 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1286) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation 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. All nonconfidential written submissions will be available for public inspection on EDIS.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant completes service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on April 24, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 24, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–08996 Filed 4–27–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On April 20, 2023, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States and State of Colorado* v. *WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC,* Civil Action No. 1:20–cv–01931–RMR–MEH.

The United States and the State of Colorado jointly filed this proposed consent decree pursuant to the Clean Air Act against Defendant WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC to resolve allegations of violations of leak detection and repair requirements at three natural gas processing plants that the company owns and operates, known as the Fort Lupton Complex, located in Weld County, Colorado. The complaint in this case, filed previously on July 1, 2020, seeks injunctive relief and civil penalties for the defendant's alleged failures to monitor and repair leaking equipment across the three natural gas processing plants. The consent decree requires the defendant to perform injunctive relief to address the alleged violations, implement mitigation projects to help offset excess emissions caused by the alleged violations, and pay a $3,500,000 civil penalty. The civil penalty will be split evenly between the United States and the State of Colorado.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Colorado* v. *WES DJ Gathering LLC f/k/a Kerr-McGee Gathering LLC,* D.J. Ref. No. 90–5–2–1–11710. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $25.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–08963 Filed 4–27–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0364]

Agency Information Collection Activities; Proposed Collection Comments Requested; Revision of Currently Approved Collection: Annual Survey of Jails in Indian Country

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 88, Number 29, pages 9306 and 9307, on February 13, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until May 30, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Todd.Minton@usdoj.gov;* telephone: 202–598–7226).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Survey of Jails in Indian Country (SJIC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–5B: *Annual Survey of Jails in Indian Country (SJIC).* The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: State, Local and Tribal Governments.

Abstract: BJS has conducted the SJIC since 1998 (excluding 2005 and 2006). The survey asks about the number of adults and juveniles held, sex of inmates, conviction status, seriousness of inmates' offenses, number of admissions and releases, number of inmate deaths, average daily population, peak population, capacity of facility, and jail staffing. This collection is the only national effort devoted to describing and understanding annual changes in the Indian country jail population. The collection enables BJS, tribal correctional authorities and administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally, as well as to track changes in the demographics and supervision status of the Indian country jail population and the prevalence of crowding.

5. *Total Estimated Number of Respondents:* 80.

6. *Total Estimated Number of Responses:* 80.

7. *Time per Response:* 75 minutes.

8. *Total Estimated Annual Time Burden:* 100 hours.

9. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: April 24, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2023–13; Exemption Application No. D–12080]

Exemption From Certain Prohibited Transaction Restrictions Involving TT International Asset Management Ltd (TTI or the Applicant) Located in London, United Kingdom

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This exemption allows TTI to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo), as described below.

DATES: The exemption will be effective for a period of one year, beginning on February 13, 2023, and ending on February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 10, 2023, the Department published a notice of proposed exemption in the **Federal Register**[1] permitting TTI to continue to rely on the exemptive relief provided by the QPAM Exemption[2] for a period of one year, notwithstanding the judgment of

[1] 88 FR 1408 (January 10, 2023).

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

conviction against TTI's affiliate, SMBC Nikko Securities, Inc. (Nikko Tokyo) for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering (the Conviction).[3] The Department is granting this exemption to ensure that the participants and beneficiaries of ERISA-covered Plans and IRAs managed by TTI (together, Covered Plans) are protected.

This exemption provides only the relief specified in the text of the exemption and does not provide relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code expressly stated herein.

The Department intends for the terms of this exemption to promote adherence by TTI to basic fiduciary standards under Title I of ERISA and the Code. An important objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with TTI in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines that it is prudent to do so.

Based on the Applicant's adherence to all the conditions of the exemption, the Department makes the requisite findings under ERISA Section 408(a) that the exemption is: (1) administratively feasible, (2) in the interest of Covered Plans and their participants and beneficiaries, and (3) protective of the rights of the participants and beneficiaries of Covered Plans. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, individually and taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

Background

TTI is a global investment firm headquartered in London, UK. TTI is wholly owned by Sumitomo Mitsui Financial Group, Inc. (SMFG) and is currently a member of the Sumitomo Mitsui Banking Corporation group (the SMBC Group). The SMBC group provides asset management services through two subsidiaries. The first is TTI, which is managed independently of the broader SMBC Group. The second is Sumitomo Mitsui DS Asset Management Company, Limited, an investment manager headquartered in Tokyo. The SMBC Group also conducts securities market activities through the SMBC Nikko Securities franchise. As relevant to this exemption, that includes Nikko Tokyo, a Japanese broker-dealer.

In offering investment management services, TTI operates as a QPAM in reliance on the QPAM Exemption.[4] In this regard, TTI advises four segregated ERISA accounts on behalf of the ERISA-covered plans of two major U.S. employers [5] and operates three segregated accounts for public pension plans, which currently hold approximately $1.1 billion in assets. TTI also manages three funds as ERISA ''plan asset'' [6] funds.[7]

The QPAM Exemption exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of the QPAM Exemption) in which a plan has an interest if the investment manager with discretion over the investment of plan assets satisfies the definition of ''qualified professional asset manager'' and satisfies additional conditions of the exemption. The QPAM Exemption was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[8]

Section I(g) of the QPAM Exemption prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided, for itself and its client plans, if that entity, an ''affiliate'' thereof,[9] or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, as a result of criminal activity described in section I(g) within the 10 years immediately preceding the transaction. Section I(g) was included in the QPAM Exemption, in part, based on the Department's expectation that a QPAM, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.

On March 24, 2022, the Tokyo District Public Prosecutors Office charged Nikko Tokyo and four of its officers and employees in Tokyo District Court with violations of Japan's Financial Instruments and Exchange Act (the Misconduct).[10] In connection with the charges, the Tokyo Public Prosecutor alleged that between December 2019 and November 2020, Nikko Tokyo, through the actions of relevant officers, purchased shares of five issuers for its own account in an attempt to peg, fix, or stabilize the prices of those securities in anticipation of a block offer. This activity was intended to ensure that the price of the securities being sold through the block offering did not decline significantly, which would have potentially harmed Nikko Tokyo's interests.[11]

On April 13, 2022, the Tokyo Public Prosecutor filed additional charges against Nikko Tokyo and two officers and employees of Nikko Tokyo for

[3] Section I(g) of PTE 84–14 generally provides that ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain crimes.

[4] Currently, TTI is the only member of the SMBC group that is relying upon the QPAM Exemption. TTI states that it is possible that certain affiliates may seek ERISA business in the future that would require reliance on the QPAM Exemption. The exemption granted herein is limited to TTI.

[5] Together, these two ERISA-covered plans currently hold approximately $218 million in assets.

[6] The Department's Plan Asset Regulations provide as a general rule that, when an employee benefit plan governed by ERISA or Section 4975 of the Code invests in an entity, the Plan's assets include the Plan's investment but do not, solely by reason of such investment in the entity, include any of the underlying assets of the entity. However, where, as in the case of the three funds, the Plan's investment is an equity interest that is not a publicly offered security or a security issued by a company that is registered under the 1940 Act, the Plan's assets include both the equity interest and an undivided interest in each of the underlying assets of the entity unless one of the exceptions in the Plan Asset Regulations is satisfied. See 29 CFR 2510.3–101.

[7] The TT Emerging Markets Opportunities Fund II Limited, the TT Environmental Solutions Equity Master Fund II Limited, and the TT Non-U.S. Equity Master Fund Limited.

[8] See 75 FR 38837, 38839 (July 6, 2010).

[9] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[10] In these block offerings, the dealer typically makes money from the spread between the price at which it purchased the shares and the price at which it sells them.

[11] The Tokyo Public Prosecutor alleged that these ''stabilization transactions'' violated Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

engaging in similar conduct in connection with five additional block offerings between October 2020 and April 2021.[12] The March 24, 2022, and April 13, 2022 charges against Nikko Tokyo were consolidated for purposes of the Tokyo District Court proceeding.

Both TTI and Nikko Tokyo are direct subsidiaries of SMFG and thus are affiliates for the purposes of Section I(g) of the QPAM Exemption. Once the Tokyo District Court issued its final decision and sentenced Nikko Tokyo in connection with the Conviction, Section I(g) was triggered and TTI, as well as TTI's Covered Plan clients, lost the ability to rely on the QPAM Exemption.

On October 19, 2022, TTI submitted an exemption request to the Department that would permit TTI and its Covered Plan clients to continue to utilize the relief in the QPAM Exemption. In support of its exemption request, TTI asserts that Nikko Tokyo is a foreign affiliate with respect to TTI and has wholly separate businesses, operations, management, systems, premises, and legal and compliance personnel; that TTI was not involved in any way in the Misconduct; and that the Misconduct did not involve any ERISA assets. TTI further states that, since its acquisition by SMFG on February 28, 2020, TTI has remained a stand-alone business with distinct reporting lines, governance structures, and control frameworks.

In its exemption application, TTI submits that Covered Plans would be harmed because of the resulting severe limitations on the investment transactions that would be available to them. Further, TTI states that Covered Plans could incur significant costs, including transaction costs, costs associated with finding and evaluating other managers, and costs associated with reinvesting assets with those new managers. These and other assertions regarding projected hardships to Covered Plans are presented in greater detail in the proposed exemption and the Department encourages readers to consult the proposed exemption for additional context.

In its exemption application, TTI requested: (1) a longer five-year term of relief and (2) an exemption that would cover TTI and TTI's current and future affiliates and related entities. The Department, however, declined TTI's requests and instead proposed a limited one-year term that applies exclusively to TTI. In this way, the Department would retain the ability to review TTI's adherence to the conditions set out in this exemption before considering a longer term of relief.

The Department notes that this exemption includes protective conditions that allow Covered Plans to continue to utilize the services of TTI if they determine that it is prudent to do so. In this regard, this exemption allows Covered Plans to avoid cost and disruption to investment strategies that may arise if such Covered Plans are forced, on short notice, to hire a different QPAM or asset manager because TTI no longer is able to rely on the relief provided by PTE 84–14 due to the Conviction.

Written Comments

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption by February 13, 2023. The Department received one written comment from the Applicant and no requests for a public hearing.

I. Comments From the Applicant

Comment 1: Certification of Audit Report

Section III(i)(7) of the proposed exemption states the following: *With respect to the Audit Report, the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption . . . Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;*

Section III(i)(8) of the Proposed exemption provides: *TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of the Corporate Planning who has a direct reporting line to the highest-ranking compliance officer of TTI must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;*

The Applicant agrees that TTI's Board of Directors and the joint general manager of the Corporate Planning Department are the appropriate recipients of the Audit Report and the appropriate persons to provide the certifications described in Section III(i)(8). However, the Applicant believes the Department should clarify the exemption to make clear that the Corporate Planning Department is a group-level function of SMFG. As a result, the joint general manager does not have a direct reporting line to the highest-ranking compliance officer of TTI; instead, the joint general manager will provide parent-level oversight of the Audit Report and TTI's compliance with the terms of the final Exemption.

Additionally, given the Corporate Planning Department's distance from TTI's day-to-day operations, the Applicant believes that it would be appropriate for TTI's general counsel or one of its three most senior executive officers to provide the certification described in Section III(i)(7) as those individuals will be directly involved in ensuring that TTI complies with the exemption and will have the personal knowledge necessary to provide the required certifications. While the joint general manager's review will provide important parent-level oversight to the process, they will not be directly involved in the audit or addressing any potential deficiencies.

The Applicant requests that Section III(j)(7) be modified to read: *With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the TTI affiliate to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption . . .*

The Applicant also requests that Section III(i)(8) be modified to read: *TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report;*

Department's Response: The Department agrees with the Applicant's requests and has modified Section (III)(i)(7). With respect to Section (III)(i)(8), the Department agrees with the Applicant's requested change, provided that the joint general manager of SMFG's Corporate Planning Department did not know of, have reason to known of, or participate in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction. With respect to this last sentence, the Department emphasizes that this is an essential requirement of this exemption.

[12] Charges were filed under Article 197 Paragraph 1, Item 5, Article 159, Paragraph 3, and Article 207, Paragraph 1, Item 1 of the FIEA and Article 60 of the Penal Code.

Comment 2: Entities in Corporate Structure

Section III(l) of the proposed exemption provides: *TTI must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If an entity within TTI's corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period,*[13] *relief in this exemption would terminate immediately;*

The Applicant believes that the language used here—''an entity within TTI's corporate structure''—is imprecise. The Applicant requests that the Department replace ''an entity within TTI's corporate structure'' with ''an affiliate of TTI within the meaning of Section VI(d) of the QPAM Exemption.''

Accordingly, the Applicant requests that Section III(l) be modified to read: *TTI must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If an affiliate of TTI's (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;*

Department's Response: The Department agrees with the Applicant's requests and has modified Section (III)(l) accordingly.

Comment 3: Exemption Period

Section I(c) of the proposed exemption provides for a one-year Exemption Period (February 13, 2023 through February 12, 2024). The Applicant requests that the Department grant a permanent or multi-year exemption based on the remoteness of TTI's involvement in the conduct related to the Conviction. In support of this request, the Applicant states that Nikko Tokyo is a remote foreign affiliate of TTI and is not in the same vertical chain of ownership; that TTI had no role in, and received no benefit from, the misconduct underlying the Conviction; and that granting a permanent exemption is the appropriate solution to sufficiently protect both the public interest and the interests of plan participants.

Department's Response: The Department declines to make the Applicant's requested change. In the Department's view, an immediate exemption is justifiable based on the existing record, as a means of protecting Covered Plans from possible losses that they might otherwise incur. The Department is not confident, however, that a longer period is appropriate based on the existing record and the limited time available for review. Under this approach, the Department retains the ability to review TTI's adherence to the conditions set out in this exemption and to further develop the record before granting a longer term.

Comment 4: Spelling of Nikko Tokyo

In the introductory paragraph to the proposed exemption, the Department defines ''Nikko Tokyo'' as ''Sumitomo Mitsui Banking Corporation Nikko Securities, Inc.'' The Applicant states that Nikko Tokyo's legal name is ''SMBC Nikko Securities, Inc.''

Department's Response: The Department acknowledges and accepts the Applicant's correction regarding the correct spelling of Nikko Tokyo.

II. Clarifications From the Department

Implementation of the Policies and Training

Section III(h)(1) of the proposed exemption requires TTI to develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). Section III(h)(2) of the proposed exemption requires TTI to implement a training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel.

The Department is clarifying that TTI must develop and implement the Policies by a date that is six months after the effective date of this exemption. The Department is also clarifying that TTI must implement the Training by a date that is six months after the effective date of this exemption. The Department notes that a six-month development and implementation period for the Policies and Training is consistent with other recently granted QPAM exemptions.

Completion of the Audit Report

Section (III)(i)(1) of the proposed exemption requires TTI to submit to an audit that covers the entire Exemption Period (February 13, 2023 through February 12, 2024). The Department is clarifying that the associated audit report must be completed by August 12, 2024. The Department notes that a six-month period for completing the audit report is consistent with other recently granted QPAM exemptions.

The complete application file (D–12080) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, please refer to the notice of proposed exemption published on January 10, 2023, at 88 FR 1408.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including but not limited to any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) administratively feasible; (b) in the interests of Covered Plans and their participants and beneficiaries; and (c) protective of the rights of the Covered Plan's participants and beneficiaries.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive for determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption and are true at all times.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application, the Department has determined to grant the following exemption under the authority of ERISA Section 408(a) in accordance with the

[13] The Exemption Period is February 13, 2023, through February 12, 2024.

Department's exemption procedures set forth in 29 CFR part 2570, subpart B: [14]

Exemption

Section I. Definitions

(a) The term ''Conviction'' means the judgment of conviction against SMBC Nikko Securities, Inc. (Nikko Tokyo) in Tokyo District Court for attempting to peg, fix or stabilize the prices of certain Japanese equity securities that Nikko Tokyo was attempting to place in a block offering that occurred on February 13, 2023.

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which TTI relies on PTE 84–14, or with respect to which TTI has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14 or the QPAM Exemption). A Covered Plan does not include an ERISA-covered plan or IRA to the extent that TTI has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(c) The term ''Exemption Period'' means the one-year period beginning on the date of the Conviction.

(d) The term ''TTI'' means TT International Asset Management Ltd, and does not include SMBC Nikko Securities, Inc. (Nikko Tokyo) or any other affiliates of TT International Asset Management Ltd.

Section II. Covered Transactions

Under this exemption, TTI will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption) notwithstanding the Conviction, as defined in Section I(a), during the Exemption Period, as defined in Section I(c) provided that the conditions set forth in Section III below are satisfied.

Section III. Conditions

(a) TTI (including its officers, directors, agents other than Nikko Tokyo, and employees) did not know of, did not have reason to know of, and did not participate in the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Conviction. For purposes of this exemption, ''participate in'' refers not only to active participation in the criminal conduct of Nikko Tokyo that is the subject of the Conviction, but also to knowing approval of the criminal conduct or knowledge of such conduct without taking active steps to prohibit it, including reporting the conduct to such individual's supervisors, and Board of Directors;

(b) TTI (including its officers, directors, employees, and agents, other than Nikko Tokyo) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction. Further, any other party engaged on behalf of TTI who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the Conviction;

(c) TTI does not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction.

(d) At all times during the Exemption Period, TTI will not use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by TTI in reliance on PTE 84–14, or with respect to which TTI has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with Nikko Tokyo, or to engage Nikko Tokyo to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of TTI to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) TTI did not exercise authority over the assets of any Covered Plan in a manner that it knew or should have known would further the criminal conduct that is the subject of the Conviction or cause TTI or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Nikko Tokyo will not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to Covered Plan assets.

(h)(1) By a date that is six (6) months after the effective date of this exemption, TTI must develop, implement, maintain, adjust (to the extent necessary), and follow the written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of TTI are conducted independently of the corporate management and business activities of Nikko Tokyo;

(ii) TTI fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) TTI does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by TTI to regulators, including, but not limited to, the Department of Labor (the Department), the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at that time;

(v) To the best of TTI's knowledge at the time, TTI does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) TTI complies with the terms of this exemption; and

(vii) Any violation of or failure to comply with an item in subparagraphs (ii) through (vi) is corrected as soon as reasonably possible upon discovery or as soon after the TTI reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the general counsel (or their functional equivalent) of TTI, and the independent auditor responsible for reviewing compliance with the Policies. TTI will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after TTI reasonably should have known of

[14] 76 FR 66637, 66644 (October 27, 2011).

the noncompliance (whichever is earlier), and provided it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) By a date that is six (6) months after the effective date of this exemption, TTI must implement a training program (the Training) during the Exemption Period for all relevant TTI asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training required under this exemption may be conducted electronically and must: (a) at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and (b) be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption;

(i)(1) TTI must submit to an audit by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of and TTI's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The audit must cover the entire Exemption Period and must be completed by August 12, 2024.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, TTI will grant the auditor unconditional access to its businesses, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access will be provided only to the extent that it is not prevented by state or federal statute, or involves communications subject to attorney client privilege and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether TTI has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test TTI's operational compliance with the Policies and Training conditions. In this regard, the auditor must test, for TTI, transactions involving Covered Plans sufficient in size, number, and nature to afford the auditor a reasonable basis to determine TTI's operational compliance with the Policies and Training;

(5) Before the end of the relevant period for completing the audit, the auditor must issue a written report (the Audit Report) to TTI that describes the procedures performed by the auditor during the course of its examination. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of TTI's Policies and Training; TTI's compliance with the Policies and Training conditions; the need, if any, to strengthen such Policies and Training; and any instance of TTI's noncompliance with the written Policies and Training described in Section III(h) above. TTI must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any action taken, or the plan of action to be taken by TTI must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that TTI has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that TTI has complied with the requirements under this subparagraph must be based on evidence that TTI has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Report created by the compliance officer (the Compliance Officer), as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor, as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Review described in Section III(m);

(6) The auditor must notify TTI of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the TTI affiliate to which the Audit Report applies must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption and that to the best of such officer's knowledge at the time, TTI has addressed, corrected or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person identified by Japanese authorities, who knew of, or should have known of, or participated in, any misconduct underlying the Conviction, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the Conviction;

(8) TTI's Board of Directors must be provided a copy of the Audit Report and the joint general manager of SMFG's Corporate Planning Department must review the Audit Report for TTI and certify in writing, under penalty of perjury, that such officer has reviewed the Audit Report. With respect to this subsection (8), such certifying joint general manager must not have known of, had reason to known of, or participated in, any misconduct underlying the Conviction, unless such person took active documented steps to stop the misconduct underlying the Conviction.

(9) TTI must provide its certified Audit Report, by electronic mail to *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, TTI must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any

duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) TTI and the auditor must submit to *e-OED@dol.gov,* any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit for inspection and review, provided such access and inspection is otherwise permitted by law; and

(12) TTI must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and TTI;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between TTI and a Covered Plan, TTI agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan, to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from TTI's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by TTI; or any claim arising out of the failure of TTI to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14, other than the Conviction. This condition applies only to actual losses caused by TTI's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 because of TTI's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of TTI for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with TTI with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by TTI, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and the restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of TTI for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of TTI and its affiliates, or damages arising from acts outside the control of TTI; and

(7) TTI must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, TTI must agree to its obligations under this Section III(j) in an updated investment management agreement between TTI and such clients or other written contractual agreement. Notwithstanding the above, TTI will not violate this condition solely because a Covered Plan refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, TTI provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14 to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with TTI. All prospective Covered Plan clients that enter into a written asset or investment management agreement with TTI after a date that is 60 days after the effective date of this exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from TTI. The notices may be delivered electronically (including by an email that has a link to the exemption). Notwithstanding the above, TTI will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement.

(l) TTI must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction. If an affiliate of TTI's (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the Exemption Period, relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, TTI must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. Notwithstanding the above, no person, including any person referenced in the indictment that gave rise to the Conviction, who knew of, or should have known of, or participated in, any misconduct described in the indictment, by any party, may be involved with the designation or responsibilities required by this condition unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect

to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of TTI's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; any material change in the relevant business activities of TTI; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of TTI;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes their material activities during the Exemption Period; (B) sets forth any instance of noncompliance discovered during the Exemption Period, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) TTI complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of TTI; the head of compliance and the general counsel (or their functional equivalent) of TTI; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(n) TTI imposes internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(o) Nikko Tokyo complies in all material respects with any requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) TTI maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which TTI relies upon the relief in this exemption;

(q) During the Exemption Period, TTI must: (1) immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by TTI or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, TTI, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of TTI's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If TTI meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Exemption Date: This exemption is in effect for a period of one year, beginning on February 13, 2023, and ending on February 12, 2024.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2023–08941 Filed 4–27–23; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Federal Contract Compliance Programs (OFCCP)-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 30, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and

clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: OFCCP administers and enforces three equal employment opportunity authorities, which prohibit employment discrimination and set affirmative action requirements for contractors that meet certain jurisdictional thresholds, Executive Order 11246, as amended (E.O. 11246); Section 503 of the Rehabilitation Act of 1973, as amended; and Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. This Information Collection Request is the reauthorization of OFCCP's complaint program. The ICR includes the form that applicants and employees of contractors, authorized representatives, or third parties can use to file an employment discrimination complaint with OFCCP. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January18, 2023 (88 FR 2971).

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–OFCCP.

Title of Collection: Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor.

OMB Control Number: 1250–0002.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 1,618.

*Total Estimated Number of Responses:*1,718.

Total Estimated Annual Time Burden: 505 hours.

Total Estimated Annual Other Costs Burden: $1,744.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2023–08968 Filed 4–27–23; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; The Family and Medical Leave Act of 1993; Disclosure and Recordkeeping Requirements

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-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 30, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601, and its regulations at 29 CFR part 825, require private sector employers that employ 50 or more employees, all public and private elementary schools, and all public agencies to provide up to 12 weeks of unpaid, job-protected leave during any 12-month period to eligible employees for certain family and medical reasons. The Department has developed optional-use forms which can be used by employers to provide required notices to employees and by employees to provide certification of their need for leave for an FMLA-qualifying reason. The FMLA disclosures ensure that both employers and employees are aware of and can exercise their rights and meet their respective obligations under the FMLA. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 9, 2022 (87 FR 67718).

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–WHD.

Title of Collection: The Family and Medical Leave Act of 1993; Disclosure and Recordkeeping Requirements.

OMB Control Number: 1235–0003.

Affected Public: Individuals or Households; Federal Government; State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 6,889,489.

Total Estimated Number of Responses: 70,414,538.

Total Estimated Annual Time Burden: 8,277,657 hours.

Total Estimated Annual Other Costs Burden: $183,594,425.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 24, 2023.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2023–08967 Filed 4–27–23; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act, The National Credit Union Administration (NCUA) is submitting the information collection to the Office of Management and Budget (OMB) for renewal: Suspicious Activity Reports by Depository Institutions pursuant to the Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance. The information collection is currently authorized by OMB Control Number 3133–0094, which expires on May 31, 2023. This information collection allows NCUA to ensure compliance with regulatory and statutory requirements for adopting and requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form.

DATES: Written comments should be received on or before May 30, 2023 to be assured consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ‘‘Currently under 30-day Review—Open for Public Comments’’ or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mahala Vixamar at (703) 718–1155, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0094.

Title: Suspicious Activity Report (SAR) by Depository Institutions.

Type of Review: Extension of a currently approved collection.

Abstract: NCUA is seeking renewal of the approval for the information collection conducted under the Bank Secrecy Act (BSA) (31 U.S.C. 5318(g)) requiring reports of suspicious transactions on a consolidated suspicious activity report (SARs) form. This information collection simplified the process through which banks inform their regulators and law enforcement about suspected criminal activity. Information about suspicious transactions conducted or attempted by, at, through, or otherwise involving credit unions are collected through FinCEN's BSA E-filing system by credit unions. A SAR is to be filed no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR. If no suspect can be identified, the period for filing a SAR is extended to 60 days. FinCEN and law enforcement agencies use the information on BSA–SARs and the supporting documentation retained by the banks for criminal investigation and prosecution purposes.

Affected Public: Federally Insured Credit Unions.

Respondents: Any NCUA-supervised institution wishing to obtain an exemption from the Suspicious Activity Report requirements.

Estimated No. of Respondents: 4,760.

Estimated No. of Responses per Respondent: 36.64.

Estimated Total Annual Responses: 174,406.

Estimated Burden Hours per Response: 1.

Estimated Total Annual Burden Hours: 174,406.

Reason for Change: The burden went down because the number of respondents decreased.

Request for Comments: NCUA published a notice requesting comments on renewal of this information under 88 FR 23691 and comments were not received. NCUA requests that comments on this collection to the location listed in the **ADDRESSES** section. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–08989 Filed 4–27–23; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Request for Information (RFI) on Developing a Roadmap for the Directorate for Technology, Innovation, and Partnerships at the National Science Foundation

AGENCY: National Science Foundation.

ACTION: Request for information.

SUMMARY: The National Science Foundation (NSF) requests input from the full range of institutions and organizations across all sectors—industry, academia, non-profits, government, venture capital, and others—to inform the development of a roadmap for its newly-established Technology, Innovation, and Partnerships (TIP) Directorate, in accordance with the CHIPS and Science Act of 2022. This legislation tasks the TIP Directorate to develop a roadmap to guide investment decisions in use-inspired and translational research over a 3-year time frame, working towards the goal of advancing U.S. competitiveness in the identified key technology focus areas and addressing the identified societal, national, and geostrategic challenges. Investments would be in use-inspired research, translation of research results to impact, and education, training, and development of talent in the key technology areas and societal, national, and geostrategic challenges.

DATES: Interested persons or organizations are invited to submit comments on or before 11:59 p.m. (EST) on July 27, 2023.

ADDRESSES: Comments submitted in response to this notice may be sent by the following methods:

- *Email: TIPRoadmap-RFI@nsf.gov.* Email submissions should be machine-readable and not be copy-protected. Submissions should include ‘‘RFI Response: Roadmap for TIP’’ in the subject line of the message.
- *Mail:* Attn: Chaitan Baru, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA.

Responses may address one or as many topics as desired from the enumerated list provided in this RFI, noting the corresponding number of the topic(s) to which the response pertains. Submissions must not exceed 10 pages (exclusive of cover page) in 11-point or

larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment, as well as the respondent type (*e.g.,* academic institution, advocacy group, professional society, community-based organization, industry, member of the public, government, other). Respondent's role in the organization may also be provided (*e.g.,* researcher, administrator, student, program manager, journalist) on a voluntary basis.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials; these materials, as well as a list of references, do not count toward the 10-page limit. No business proprietary information, copyrighted information, or personally identifiable information (aside from that requested above) should be submitted in response to this RFI. Comments submitted in response to this RFI may be posted online or otherwise released publicly.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Chaitan Baru at *TIPRoadmap-RFI@nsf.gov,* (703) 292–4596.

SUPPLEMENTARY INFORMATION: The CHIPS and Science Act of 2022 authorized the creation of a Directorate for Technology, Innovation, and Partnerships (TIP) at NSF with the purpose of (i) supporting use-inspired and translational research and accelerating the development and use of federally funded research, (ii) strengthening United States competitiveness by accelerating the development of key technologies, and (iii) growing the domestic workforce in key technology focus areas and expand the participation of United States students and researchers in areas of societal, national, and geostrategic importance, at all levels of education.

In establishing this new directorate, Congress identified ten initial key technology focus areas in which TIP investments should focus on advancing U.S. competitiveness, along with related societal, national, and geostrategic challenges to be addressed through TIP-supported research, as listed below.

Key Technology Focus Areas

(1) Artificial intelligence, machine learning, autonomy, and related advances.

(2) High performance computing, semiconductors, and advanced computer hardware and software.

(3) Quantum information science and technology.

(4) Robotics, automation, and advanced manufacturing.

(5) Natural and anthropogenic disaster prevention or mitigation.

(6) Advanced communications technology and immersive technology.

(7) Biotechnology, medical technology, genomics, and synthetic biology.

(8) Data storage, data management, distributed ledger technologies, and cybersecurity, including biometrics.

(9) Advanced energy and industrial efficiency technologies, such as batteries and advanced nuclear technologies, including but not limited to for the purposes of electric generation

(10) Advanced materials science, including composites 2D materials, other next-generation materials, and related manufacturing technologies.

Societal, National, and Geostrategic Challenges

(1) United States national security.

(2) United States manufacturing and industrial productivity.

(3) United States workforce development and skills gaps.

(4) Climate change and environmental sustainability.

(5) Inequitable access to education, opportunity, or other services.

The legislation tasked the Directorate to develop a roadmap to guide investment decisions in use-inspired and translational research over a 3-year time frame, working towards the goal of advancing U.S. competitiveness in the identified key technology focus areas and addressing the societal, national, and geostrategic challenges.

Terminology

This RFI uses the following definitions:

—*Use-Inspired Research:* Research that is motivated based on challenges seen in human society.

—*Translational Research:* Research that moves an idea, invention, and/or other research output past the fundamental discovery stage toward results and outcomes that directly benefit people through societal or economic impacts.

Information Requested. Respondents may provide information for one or as many topics below as they choose. Through this RFI, NSF seeks information to inform development of a roadmap to guide TIP research and development and workforce investments over a 3-year period.

1. *Prioritization.* What evidence exists that should guide NSF in determining priorities across the technologies listed above in advancing or maintaining U.S. competitiveness? Within each technology area, are there critical use-inspired and translational research topics that should be prioritized for NSF investment in a 1- to 3-year time frame to advance U.S. competitiveness, and if so, why? Which research topics within each of the technology areas can be reasonably expected to be funded by others, making them less critical for TIP funding?

2. *Suitability.* Which technologies, or topics within the technologies listed above, are well-suited for the type of use-inspired and translational research that TIP has the mandate to support? What kind of investment approaches or funding vehicles would have the greatest impact in maturing said technology?

3. *Workforce.* Which of the technologies listed above will have the greatest workforce needs in the next 1 to 5 years, understanding that investments in workforce initiatives often have longer time horizons to produce results? To meet this growing demand, how could TIP programs be structured to best supply these workforce needs, including pathways to the state and local levels, considering education and training at every level?

a. How could TIP collaborate with other government and private organizations to ensure workforce development activities address industry priorities across the key technology focus areas and societal, national, and geostrategic challenges while broadening the talent base through diversity, equity, inclusion, and accessibility?

b. How could the directorate inform state, local, and tribal government of the knowledge, skills, and abilities needed to build pathways to prepare future workers and reskill current workers for entry into the key technology focus areas?

4. *Addressing societal challenges.* Considering the ways each of the key technology focus areas will impact each of the societal, national, and geostrategic challenges, which of the technology areas should receive investment priority and why? This includes investments in use-inspired and translational research, education, training, as well as general literacy on a given topic. On what specific challenge problems related to the societal, national, and geostrategic challenges could TIP focus that would, in turn, drive technological development in the key technology areas?

5. *Additions.* Are there technology areas that should be prioritized for TIP

investment in the near term that are not included in the above list, such as those included on the National Science and Technology Council's Critical and Emerging Technologies List, and if so, why?

6. *Crosscutting investments.* What translational research investments can be made to drive innovation by addressing critical needs common to multiple technology focus areas? What are these shared needs, and among which technology areas?

7. Other topics, in your view, that are relevant to developing a roadmap for TIP.

Authority: 42 U.S.C. 1861, et al.

Dated: April 24, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–08995 Filed 4–27–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: This meeting was noticed on April 20, 2023, at 88 FR 24452.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, April 26, 2023, at 11:00–11:30 a.m. EDT.

CHANGES IN THE MEETING: This meeting is CANCELLED.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000.

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–09110 Filed 4–26–23; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Awards and Facilities Committee hereby gives notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE:

Wednesday, May 3, 2023, from 2:00–3:00 p.m. EDT

Friday, May 5, 2023, from 10:00 a.m.–1:00 p.m. EDT

Monday, May 8, 2023, from 1:00–5:00 p.m. EDT

PLACE: This meeting will be held by videoconference through National Science Foundation headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

May 3, 2023: Committee Chair's opening remarks about the agenda; Antarctic Infrastructure Recapitalization (AIR) Program.

May 5, 2023: Committee Chair's opening remarks about the agenda; Renewal of National Center for Atmospheric Research (NCAR) Operations and Maintenance Award; Context of Request for Proposal for Antarctic Research Vessel Integrator; and Context of Renewal of Laser Interferometer Gravitational-Wave Observatory (LIGO) Operations and Maintenance Award.

May 8, 2023: Committee Chair's opening remarks about the agenda; Recompetition of National Ecological Observatory Network (NEON) Operations and Maintenance Award; Renewal of Ocean Observatories Initiative (OOI) Operations and Maintenance Award; and Context of Arecibo Record of Decision.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Michelle McCrackin, *mmccrack@nsf.gov,* (703) 292–7000. Meeting information and updates may be found at *www.nsf.gov/nsb.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–09112 Filed 4–26–23; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF Federal Cyber Scholarship-for-Service Program (CyberCorps® SFS)

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: CyberCorps® SFS Scholarship Agreement to Serve or Repay.

OMB Control No.: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection for three years.

Abstract: NSF published a Notice of Proposed Rulemaking on July 15, 2022 (87 FR 42431), which included a requirement for an information

collection. The proposed rule set forth additional information collection activities subject to OMB clearance and approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA). OPM, in operating the SFS program office on behalf of NSF, already has OMB clearance for information collected from scholarship recipients and others through its SFS online Web portal, which NSF's rule does not modify. *See* OMB Control Number 3206–0246.[1]

The additional information to be collected under the NSF's rule includes any additional employment, contact, or other information relating to a scholarship recipient's repayment obligation if the recipient fails to fulfill the terms and conditions of the scholarship, the conversion of that obligation into a Federal direct unsubsidized student loan administered by and payable to the Department of Education, and/or the referral of that repayment obligation to the Department of Treasury for amounts that remain unpaid and cannot be converted to such a loan. *See* § 620.3, § 620.6. This information collection activity would also include any form, questionnaire, or other set of identical questions relating to a scholarship recipient's request to defer or waive their service or repayment obligation. *See* § 620.4, § 620.5. The proposed rule document provided an estimate of the total number of respondents and annual burden hours. NSF received no public comments on the proposed information collection activities or burden estimates.

Use of the Information: Information collected from scholarship recipients will be used to monitor their compliance with the program's service obligation, to update and maintain their current contact information in relevant agency records maintained by NSF and OPM, to answer questions regarding the recipient's repayment obligation or the conversion of that obligation to an unsubsidized student loan for collection purposes by the Department of Education, and to review and determine whether to grant or deny any individual requests or appeals to NSF for discharge or deferral of their repayment or service obligation. Information pertaining to the conversion of the recipient's obligation to a Federal unsubsidized student loan may be forwarded to and used by NSF, the Department of Education, and Department of Treasury, as applicable, for student loan management, tracking, and collection purposes. Information may also be used to prepare and disseminate aggregate statistics or other data to fulfill statutory program tracking, reporting, and evaluation requirements.

Expected Respondents: Individual participants in the CyberCorps Scholarships for Service Program.

Estimated Number of Annual Respondents: 20.

Burden on the Public: 2 hours minutes per respondent for an estimated 40 hours annually.

Dated: April 24, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–08994 Filed 4–27–23; 8:45 am]

BILLING CODE 7555–01–P

[1] NSF also has its own OMB approval and clearance number (3145–0058) that applies when it collects information from institutions of higher education that seek or obtain grant awards under the CyberCorps® SFS program to fund scholarships to their students.

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 1, 8, 15, 22, 29, June 5, 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 May 1, 2023

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.

Week of May 15, 2023—Tentative

Tuesday, May 16, 2023

9:00 a.m. Update on 10 CFR part 53 Licensing and Regulation of Advanced Nuclear Reactors (Public Meeting); (Contact: Scott Tonsfeldt: 301–415–1783).

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/.*

Thursday, May 18, 2023

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Jeffrey Lynch: 301–415–5041).

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 May 22, 2023—Tentative

There are no meetings scheduled for the week of May 22, 2023.

Week of May 29, 2023—Tentative

There are no meetings scheduled for the week of May 29, 2023.

Week of June 5, 2023—Tentative

Friday, June 9, 2023

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Larry Burkhart: 301–287–3775).

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/.*

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: April 26, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–09196 Filed 4–26–23; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97365; File No. SR–LTSE–2023–01]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

April 24, 2023.

On February 27, 2023, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule to adopt Listing Standards for the recovery of erroneously awarded compensation, as required by Rule 10D–1 of the Act. On March 9, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 17, 2023.[3] The Commission has received no comments on the proposal, as modified by Amendment No. 1.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 1, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 15, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–LTSE–2023–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08984 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97123 (March 13, 2023), 88 FR 16487.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97360; File No. SR–GEMX–2023–05]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7

April 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2023, Nasdaq GEMX, LLC (''GEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on November 1, 2023.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7. Specifically, GEMX proposes to: (1) add the defined term ''Exposed Order'' within Options 7, Section 1(c); and (2) amend Options 7, Section 6.C. to offer certain free ports in connection with an upcoming technology migration.[3] Each change is described below.

Options 7, Section 1

The Exchange proposes to define an Exposed Order for purposes of pricing within Options 7. The Exchange introduced the concept of an ''exposure'' in a rule change amending GEMX's routing rules.[4] In that rule change, the Exchange noted that for purposes of GEMX's Options 5, Section 4 routing rule, ''exposure'' or ''exposing'' an order means a notification sent to Members with the price, size, and side of interest that is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Options Trader Alert #2023–4. The GEMX migration will commence on Monday, November 6, 2023.

[4] *See* Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration). GEMX's Options 5 rules are incorporated by reference to Nasdaq ISE, LLC Options 5 rules. *See also* Securities Exchange Act Release No. 97126 (March 13, 2023), 88 FR 16485 (March 17, 2023) (SR–GEMX–2023–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Certain Trading Functionality).

available for execution.[5] The order exposure will apply to both routed orders and non-routed or ''DNR Orders.'' The order exposure process permits the Exchange to apply a Route Timer[6] prior to the initial and subsequent routing of an order and allows routing of the order after exposure occurs (during open trading) every time an order becomes marketable against the ABBO.[7]

At this time, the Exchange proposes to amend Options 7, Section 1(c) to provide,

An ''Exposed Order'' is an order that is broadcast via an order exposure alert as described within Options 5, Section 4 (Order Routing). Unless otherwise noted in Options 7, Section 3 pricing, Exposed Orders will be assessed the applicable ''Taker'' Fee and any order or quote that executes against an Exposed Order during a Route Timer will be paid/assessed the applicable ''Maker'' Rebate/Fee.

As proposed, the defined term would apply a Taker Fee, where applicable, to an executed Exposed Order. If an order or quote allocates against the Exposed Order during the Route Timer described within Options 5, Section 4, the Exchange would pay/assess the applicable Maker Rebate and/or Maker Fee. The Exchange believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Options 7, Section 6

In connection with a technology migration,[8] Members may request new FIX Ports,[9] SQF Ports,[10] SQF Purge Ports,[11] OTTO Ports,[12] CTI Ports,[13] and FIX DROP Ports,[14] at no additional cost, from November 1, 2023 through November 30, 2023 (''Transition Period'') which are duplicative of the type and quantity of their legacy ports. These second set of new ports would allow Members time to test ports to the new environment as well as provide continuous connection to the Exchange's match engine during the Transition Period.[15] During the Transition Period, Members will be required to utilize their new ports on the new GEMX platform for symbols that have migrated to the new platform, while continuing to leverage legacy ports for symbols that have not yet migrated to the new platform.[16] For example, a GEMX Member with 3 legacy SQF Ports, 1 legacy SQF Purge Port, 1 legacy FIX DROP Port, 1 legacy OTTO Port, and 1 legacy CTI Port on November 1, 2023 could request the equivalent quantity and type of new ports (3 SQF Ports, 1 SQF Purge Port, 1 FIX DROP Port, 1 OTTO Port, and 1 CTI Port) for the new GEMX environment during the Transition Period at no additional cost. During the Transition Period, the GEMX Member would be assessed only for legacy ports and would not be assessed for the new ports, which are duplicative of the legacy ports.

A Member may acquire additional legacy ports during the Transition Period and would be assessed the charges indicated in the current Pricing Schedule at Options 7, Section 6.C, respectively, for those additional legacy ports.

The technology migration does not require a Member to acquire any additional legacy ports or any specific number of new ports, rather the technology migration requires a new port to connect to the new GEMX environment. As is the case today, a Member may decide the number of ports they desire to subscribe to on the new technology platform.[17]

Of note, only GEMX Members may utilize ports on GEMX and only one port is necessary to submit orders to GEMX. Similarly, a Market Maker quoting on GEMX only requires 1 SQF Port.[18] A Member may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of market data ports.[19] Members are able to elect the quantity and type of ports they

[5] *See* GEMX Options 5, Section 4(a) which is effective but not yet operative. *See also* Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

[6] For purposes of Options 5, Section 4, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer.

[7] *See* GEMX Options 5, Section 4 which is effective but not yet operative. *See also* Securities Exchange Act Release No. 94897 (May 12, 2022), 87 FR 30294 (May 18, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

[8] GEMX is migrating its technology to an enhanced Nasdaq, Inc. functionality which results in higher performance, scalability, and more robust architecture.

[9] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[10] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Supplementary Material .03(c) to Options 3, Section 7.

[11] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner.

[12] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

[13] Clearing Trade Interface (''CTI'') is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement (''CMTA'') or The Options Clearing Corporation (''OCC'') number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (*e.g.,* auction type) for billing purposes; and (v) market participant capacity. *See* Option 3, Section 23(b)(1).

[14] FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3).

[15] Members would contact Market Operations to acquire new duplicative ports.

[16] *See* Options Trader Alert #2023–4. The GEMX migration will commence on Monday, November 6, 2023 and end on Monday, November 13, 2023.

[17] The technology migration is 1:1 and therefore would not require a Member to acquire an additional quantity of new ports, nor would it reduce the total number of ports needed to connect to the match engine.

[18] SQF Ports are utilized solely by Market Makers who are the only Members permitted to quote on GEMX.

[19] GEMX does not assess fees for the market data ports within Options 7, Section 6.C(iii). Members may acquire any number of market data ports at no cost.

purchase based on that Member's business model.[20]

This proposal is not intended to impose any additional fees on any GEMX Member. Rather, this proposal is intended to permit a GEMX Member to utilize the new environment with the same type and quantity of legacy ports, at no additional cost, during the Transition Period.

GEMX will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 29, 2023. After December 29, 2023, each Member would only be able to utilize the new ports for the new environment. Starting December 1, 2023, the port fees in Options 7, Section 6.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[21] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [23]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [25] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [26] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [27]

Options 7, Section 1

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) is reasonable because it will provide Members information as to the manner in which pricing will be applied to both the Exposed Order as well as an order or quote that allocates against the Exposed Order.[28] As proposed, the applicable Taker Fee would apply to an executed Exposed Order and the applicable Maker Rebate and/or Maker Fee would apply to an order or quote that allocated against the Exposed Order during the Route Timer. The Exchange believes the proposed pricing should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders. Order exposure has the potential to result in more efficient executions for participants as responses to exposed orders could result in faster executions. Order exposure assures that such exposed orders will only receive executions at a price at least as good as the price disseminated by the best away market at the time the order was received. Further, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply the Taker Fee to Exposed Orders and the Maker Rebate/Fee to any order or quote that executes against an Exposed Order during a Route Timer because the Exposed Order that would route to an away market if not otherwise executed on GEMX would be taking liquidity from the Exchange's order book while a quote or order that executes against the Exposed Order during the Route Timer would be considered making liquidity in response to the notification sent to Members indicating the order is available for execution. Nasdaq MRX, LLC (''MRX'') similarly assesses a Taker Fee to an exposed order and pays/ assesses a Maker Rebate/Fee to any order or quote that executes against the exposed order during the Route Timer.[29]

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) is equitable and not unfairly discriminatory as the proposed pricing for Exposed Orders would be uniformly applied to all orders subject to the Exchange's Route Timer, as described in Options 5, Section 4.

Options 7, Section 6

The proposed amendments to Options 7, Section 6.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration are reasonable because they will permit GEMX Members to migrate to the new platform without a pricing impact. Specifically, the proposal is intended to permit GEMX Members to migrate their legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports to new ports at no additional cost during the Transition Period. This proposal will allow Members to test their ports and maintain continuous connection to the

[20] For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[21] *See* 15 U.S.C. 78f(b).

[22] *See* 15 U.S.C. 78f(b)(4) and (5).

[23] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[25] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[26] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[27] *Id.*

[28] *See* Option 5, Section 4.

[29] *See* MRX Options 7, Section 1(c).

Exchange's match engine during the Transition Period.

The proposed amendments to Options 7, Section 6.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration are equitable and not unfairly discriminatory because no Member would have a pricing impact as a result of this proposal, provided the Member did not obtain additional new ports to connect to the GEMX environment beyond the quantity and type the Member had on November 1, 2023 or additional legacy ports. No Member would be assessed a fee for the new second set of ports, provided they acquired a new second set of ports commiserate with the type and quantity of ports they subscribed to as of November 1, 2023. A Member obtaining additional legacy ports, beyond the current type and quantity of ports they have as of November 1, 2023, would be assessed the fees noted in Options 7, Section 6.C as applicable. GEMX will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 29, 2023, so no Member would have a second type or quantity of a particular port as of December 29, 2023. Starting in December 1, 2023, the port fees in Options 7, Section 6.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.

The technology migration does not require a Member to acquire any additional quantity of new ports, nor would it reduce the total number of ports needed to connect to the match engine. Rather the technology migration requires a new port to replace any legacy port provided the Member desired to maintain the same number of ports on the new GEMX technology platform. Of note, only GEMX Members may utilize ports on GEMX and only one port is necessary to submit orders to GEMX. Similarly, a Market Maker quoting on GEMX only requires 1 SQF Port.[30] A Member may also obtain any number of order and execution ports, such as a SQF Purge Ports, FIX DROP Ports and CTI Ports and any number of market data ports.[31] Members are able to elect the quantity and type of ports they purchase based on that Member's business model.[32]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

Options 7, Section 1

The Exchange's proposal to define an Exposed Order for purposes of pricing within Options 7, Section 1(c) does not impose an undue burden on competition because the proposed pricing for Exposed Orders would be uniformly applied to all orders subject to the Exchange's Route Timer, as described in Options 4, Section 5.

Options 7, Section 6

The proposed amendments to Options 7, Section 6.C to permit Members to acquire a second set of FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports, at no cost, as part of the technology migration do not impose an undue burden on competition because no Member would have a pricing impact as a result of this proposal, provided the Member did not obtain additional new ports to connect to the GEMX environment beyond the quantity and type the Member had on November 1, 2023 or additional legacy ports. No Member would be assessed a fee for the new second set of ports, provided they acquired a new second set of ports commiserate with the type and quantity of ports they subscribed to as of November 1, 2023. A Member obtaining additional legacy ports, beyond the current type and quantity of ports they have as of November 1, 2023, would be assessed the fees noted in Options 7, Section 6.C as applicable. GEMX will sunset legacy FIX Ports, SQF Ports, SQF Purge Ports, OTTO Ports, CTI Ports and FIX DROP Ports on December 29, 2023, so no Member would have a second type or quantity of a particular port as of December 29, 2023. Starting in December 1, 2023, the port fees in Options 7, Section 6.C would apply to any substituted ports that a Member continues to subscribe to after the Transition Period.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2023–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange

[30] SQF Ports are utilized solely by Market Makers who are the only Members permitted to quote on GEMX.

[31] GEMX does not assess fees for the market data ports within Options 7, Section 6.C(iii). Members may acquire any number of market data ports at no cost.

[32] For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2023–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–GEMX–2023–05 and should be submitted on or before May 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08979 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97368; File No. SR–CBOE–2023–018]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Make Permanent the Operation of its Flexible Exchange Options Pilot Program Regarding Permissible Exercise Settlement Values for FLEX Index Options

April 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2023, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make permanent the operation of its Flexible Exchange Options (''FLEX Options'') pilot program (''Pilot Program'') regarding permissible exercise settlement values for FLEX Index Options. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.21. Series of FLEX Options

(a) No change.

(b) *Terms.* When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option), which terms constitute the FLEX Option series:

(1)–(4) No change.

(5) settlement type:

(A) No change.

(B) *FLEX Index Options.* FLEX Index Options are settled in U.S. dollars, and may be:

(i) No change.

(ii) p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities)[, except for a FLEX Index Option that expires on any business day that falls on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than a QIX option) may only be a.m.-settled; however, for a pilot period ending the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis, a FLEX Index Option with an expiration date on the third-Friday of the month may be p.m.-settled];

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent its Pilot Program that permits the Exchange to list FLEX Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (other than QIX options) (''FLEX PM Third Friday''). The Securities and Exchange Commission (the ''Commission'') approved a Cboe Options rule change that, among other things, established a pilot program regarding permissible exercise settlement values for FLEX Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Options on January 28, 2010.[3] The Exchange has extended the pilot period numerous times, which is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis.[4] The Exchange hereby requests that the Commission approve the FLEX PM Third Friday Pilot Program on a permanent basis.

By way of background, when cash-settled [5] index options were first introduced in the 1980s, settlement was based on the closing value of the underlying index on the option's expiration date. The Commission later became concerned about the impact of P.M.-settled, cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays. Specifically, certain episodes of price reversals around the close on quarterly expiration dates attracted the attention of regulators to the possibility that the simultaneous expiration of index futures, futures options, and options might be inducing abnormal volatility in the index value around the close.[6] Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.[7] In light of the concerns with P.M.-settlement and to help ameliorate the price effects associated with expirations of P.M.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission (''CFTC'') approved a rule change by the Chicago Mercantile Exchange (''CME'') to provide for A.M. settlement [8] for index futures, including futures on the S&P 500.[9] The Commission subsequently approved a rule change by Cboe Options to list and trade A.M.-settled SPX options.[10] In 1992, the Commission approved Cboe Options' proposal to transition all of its European-style cash-settled options on the S&P 500 Index to A.M.-settlement; [11] however, in 1993, the Commission approved a rule allowing Cboe Options to list P.M.-settled options on certain broad-based indices, including the S&P 500, expiring at the end of each calendar quarter (''Quarterly Index Expirations'') (since adopted as permanent).[12] Starting in 2006, the Commission approved numerous rule changes, on a pilot basis, permitting the Cboe Options to introduce other index options, including SPX options, with P.M.-settlement. These include P.M.-settled index options expiring weekly (other than the third Friday) and at the end of each month (''EOM''),[13] P.M.-settled options on the S&P 500 Index that expire on the third Friday-of-the-month (''SPXPM''),[14] as well as P.M.-settled Mini-SPX Index (''XSP'') options and Mini-Russell 2000 Index (''MRUT'') options expiring on the third Friday.[15]

As stated above, since its inception in 2010, the Exchange has continuously extended the FLEX PM Third Friday Pilot Program period and, during the course of the FLEX PM Third Friday Pilot Program and in support of the extensions of the FLEX PM Third Friday Pilot Program, the Exchange has submitted reports to the Commission regarding the Pilot Program that detail the Exchange's experience with the Pilot Program, pursuant to the FLEX PM Third Friday Pilot Program.[16] Specifically, the Exchange provided the Commission with annual reports analyzing volume and open interest for each broad-based FLEX Index Options class overlying a third Friday-of-the-month expiration day, p.m.-settled FLEX Index Options series. The annual reports also contained certain pilot period and pre-pilot period analyses of volume and open interest for third Friday-of-the-month expiration days, a.m.-settled FLEX Index series and third Friday-of-the-month expiration day Non-FLEX Index series overlying the

[3] Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (''Approval Order''). The initial pilot period was set to expire on March 28, 2011, which date was added to the rules in 2010. *See* Securities Exchange Act Release No. 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026).

[4] *See* Securities Exchange Act Release Nos. 64110 (March 23, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024); 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR–CBOE–2012–027); 68145 (November 2, 2012), 77 FR 67044 (November 8, 2012) (SR–CBOE–2012–102); 70752 (October 24, 2013), 78 FR 65023 (October 30, 2013) (SR–CBOE–2013–099); 73460 (October 29, 2014), 79 FR 65464 (November 4, 2014) (SR–CBOE–2014–080); 77742 (April 29, 2016), 81 FR 26857 (May 4, 2016) (SR–CBOE–2016–032); 80443 (April 12, 2017), 82 FR 18331 (April 18, 2017) (SR–CBOE–2017–032); 83175 (May 4, 2018), 83 FR 21808 (May 10, 2018) (SR–CBOE–2018–037); 84537 (November 5, 2018), 83 FR 56113 (November 9, 2018) (SR–CBOE–2018–071); 85707 (April 23, 2019), 84 FR 18100 (April 29, 2019) (SR–CBOE–2019–021); 87515 (November 13, 2020), 84 FR 63945 (November 19, 2019) (SR–CBOE–2019–108); 88782 (April 30, 2020), 85 FR 27004 (May 6, 2020) (SR–CBOE–2020–039); 90279 (October 28, 2020), 85 FR 69667 (November 3, 2020) (SR–CBOE–2020–103); 91782 (May 5, 2021), 86 FR 25915 (May 11, 2021) (SR–CBOE–2021–031); 93500 (November 1, 2021), 86 FR 61340 (November 5, 2021) (SR–CBOE–2021–064); 94812 (April 28, 2022), 87 FR 26381 (May 4, 2022) (SR–CBOE–2022–020); *and* 96239 (November 4, 2022), 87 FR 67985 (November 10, 2022) (SR–CBOE–2022–053). At the same time the permissible exercise settlement values pilot was established for FLEX Index Options, the Exchange also established a pilot program eliminating the minimum value size requirements for all FLEX Options. *See* Approval Order, *supra* note 3. The pilot program eliminating the minimum value size requirements was extended twice pursuant to the same rule filings that extended the permissible exercise settlement values (for the same extended periods) and was approved on a permanent basis in a separate rule change filing. *See id; and* Securities Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR–CBOE–2012–040) (Order Granting Approval of Proposed Rule Change Related to Permanent Approval of Its Pilot on FLEX Minimum Value Sizes).

[5] The seller of a ''cash-settled'' index option pays out the cash value of the applicable index on expiration or exercise. A ''physically settled'' option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. *See* Characteristics and Risks of Standardized Options, available at: *https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Document.*

[6] The close of trading on the quarterly expiration Friday (*i.e.,* the third Friday of March, June, September and December), when options, index futures, and options on index futures all expire simultaneously, became known as the ''triple witching hour.''

[7] *See* Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (''DERA Staff PM Pilot Memo'') at 5, available at: *https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf.*

[8] The exercise settlement value for an A.M.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

[9] *See* Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (noting that CME moved S&P 500 futures contract's settlement value to opening prices on the delivery date).

[10] *See id.*

[11] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09). Thereafter, the Commission approved proposals by the options markets to transfer most of their cash-settled index products to A.M. settlement.

[12] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13); *and see* Rule 4.13(a)(2)(B); *see also* Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65); *and* 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR–CBOE–2009–029).

[13] *See* Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR–CBOE–2015–106); 78132 (June 22, 2016), 81 FR 42018 (June 28, 2016) (SR–CBOE–2016–046); *and* 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR–CBOE–2016–046).

[14] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[15] *See* Securities Exchange Act Release Nos. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055); *and* 91067 (February 5, 2021) 86 FR 9108 (February 11, 2021) (SR–CBOE–2020–116).

[16] *See supra* note 3.

same index as a third Friday-of-the-month expiration day, p.m.-settled FLEX Index option. The annual reports also contained information and analysis of FLEX Index Options trading patterns, and index price volatility and underlying share trading activity for each broad-based index class overlying an Expiration Friday, p.m.-settled FLEX Index Option that exceeds certain minimum open interest parameters. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest.

Also, during the course of the FLEX PM Third Friday Pilot Program, the Exchange provided the Commission with any additional data or analyses the Commission requested if it deemed such data or analyses necessary to determine whether the Pilot Program was consistent with the Exchange Act. The Exchange has made public on its website all data and analyses previously submitted to the Commission under the FLEX PM Third Friday,[17] and will continue to make public any data and analyses it submits to the Commission while the FLEX PM Third Friday is still in effect.

The Exchange has concluded that the FLEX PM Third Friday does not negatively impact market quality or raise any unique or prohibitive regulatory concerns. The Exchange has not identified any evidence from the pilot data indicating that the trading of P.M.-settled FLEX options has any adverse impact on fair and orderly markets on Expiration Fridays for broad-based indexes or the underlying securities comprising those indexes, nor have there been any observations of abnormal market movements attributable to P.M.-settled FLEX options from any market participants that have come to the attention of the Exchange.

Based on a study conducted by the Commission's Division of Economic and Risk Analysis (''DERA'') staff on the pilot data from 2006 through 2018,[18] and the Exchange's review of the pilot data from 2019 through 2021, the size of the market for P.M.-settled SPX options (including quarterly, weekly, EOM and third Friday expirations) since 2007 has grown from a trivial portion of the overall market to a substantial share (from around 0.1% of open interest in 2007 to 30% in 2021).[19] Notional value of open interest in P.M.-settled SPX options increased from approximately a median of $1.5 billion in 2007 to $1.9 trillion in 2021, approximately 1260 times its value in 2007. Notional open interest in A.M.-settled SPX options was already hovering around a median of $1.4 trillion in 2007, and it has since increased to approximately $4.4 trillion in 2021. It is also important to note that open interest on expiring P.M.-settled SPX options, as compared to A.M.-settled options, is spread out across a greater number of expiration dates, which results in a smaller percentage of open interest expiring on any one date, thus mitigating concerns that SPXPM option expiration may have a disruptive effect on the market.[20] Daily trading volume in P.M.-settled SPX options has increased from a median of about 700 contracts in 2007 to nearly 1.9 million contracts in 2021,[21] and now exceeds trading volume in A.M.-settled SPX options.

Moreover, the DERA staff study of the P.M.-settled SPX options pilot data (2006 through 2018) did not identify any significant economic impact on S&P 500 futures,[22] the S&P 500, or the underlying component securities of the S&P 500 surrounding the close. For purposes of the study, volatility was by and large measured by using the standard deviation[23] of one-minute returns of S&P 500 futures values and the index value during regular hours on each day reviewed (excluding the first and last 15 minutes of trading) and then compared with the standard deviation of one-minute returns (for S&P 500 futures, the S&P 500, and the underlying component securities of the S&P 500) over the last 15 minutes of a trading day.[24] Using this as a general measure,[25] the DERA staff study then reviewed whether, and to what extent, the settlement quantity of SPXPM options and the levels of open interest in SPXPM options on expiration days (as compared to non-expiration days) may be associated with general price volatility and price reversals for S&P 500 futures, the S&P 500, and the underlying component securities of the S&P 500 near the close. From its review of the study, the Exchange agrees that, although volatility before the market close is generally higher than during the rest of the trading day, there is no evidence of any significant adverse economic impact to the futures, index, or underlying index component securities markets as a result of the quantity of P.M.-settled SPX options that settle at the close or the amount of expiring open interest in P.M.-settled SPX options. For example, the largest settlement event that occurred during the time period of the study (a settlement of $100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of $0.54 relative to a closing futures price of $2,677).

In particular, the DERA staff study found that an additional P.M.-settled SPX options settlement quantity equal to $10 billion in notional value is associated with a marginal impact on futures prices during the last 15 minutes of the trading day of only about $0.06 (where the hypothetical index level is 2,500), additional expiring open interest in P.M.-settled SPX options equal to $10 billion in notional value is associated with a marginal impact on futures prices during the last 15 minutes of the trading day of only about $0.05 (assumed index level is 2,500). Also, an additional

[17] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data.*

[18] *See* DERA Staff PM Pilot Memo, at 13 (''Option settlement quantity data for A.M.- and P.M.-settled options were obtained from the Cboe, including the number of contracts that settled in-the-money for each exchange-traded option series on the S&P 500 index . . . on expiration days from January 20, 2006 through December 31, 2018. Daily open interest and volume data for [SPX] option series were also obtained from Cboe, including open interest data from January 3, 2006 through December 31, 2018 and trading volume data from January 3, 2006 through December 31, 2018.'')

[19] The DERA staff study reviewed and provided statistics for market share, median notional value of open interest and median volume in 2007 and in 2018. The Exchange provides updated statistics for market share, median notional value of open interest and median volume in 2021, replacing the 2018 statistics provided in the Commission staff study.

[20] *See* DERA Staff PM Pilot Memo, at 2.

[21] The Exchange notes that the DERA staff study used two-sided volume data for the median volume in 2007 and in 2018; therefore, the Exchange provides two-sided volume data for the median volume in 2021.

[22] Futures on the S&P 500 experience high volume and liquidity both before and after the close of the underlying market. Therefore, futures are a useful measure of abnormal volatility surrounding the close and the open. *See* DERA Staff PM Pilot Memo, at 14. The Exchange agrees with this approach.

[23] Standard deviation applied to a rate of return (in this case, one-minute) of an instrument can indicate that instrument's historical volatility. The greater the standard deviation, the greater the variance between price and the mean, which indicates a larger price range, *i.e.,* higher volatility.

[24] For example, if on a particular day the standard deviation of one-minute returns between 3:45 p.m. ET and 4:00 p.m. ET is 0.004 and the standard deviation of returns from 9:45 a.m. ET to 3:45 p.m. ET is 0.002, this metric would take on a value of 2 for that day, indicating that volatility during the last 15 minutes of the trading day was twice as high as it was during the rest of the trading day. *See* DERA Staff PM Pilot Memo, at 15; *see also* DERA Staff PM Pilot Memo, at Section V, which discusses in detail the metrics used to measure, for the purposes of the study, the extent to which the market may experience abnormal volatility surrounding SPXPM option settlement.

[25] *See* DERA Staff PM Pilot Memo, at Section V, which discusses in detail the metrics used to measure, for the purposes of the study, the extent to which the market may experience abnormal volatility surrounding SPXPM option settlement.

increase in settlement quantity or in expiring open interest, each equal to $20 million in notional value, did not result in any meaningful futures price reversals near the close (neither was found to cause a price reversal of over one standard deviation[26]).

Likewise, the study identified that an additional total P.M.-settled SPX options settlement quantity equal to $10 billion in notional value corresponds to price movement in the S&P 500 of only about $0.08 (assuming an index level of 2,500) during the last 15 minutes of the trading day, and that additional expiring open interest equal to $10 billion in notional value corresponds to a price movement in the S&P 500 of only about $0.06 (assuming an index level of 2,500) during the last 15 minutes of the trading day. The study also identified that it would take an increase of $34 billion in notional value of total settlement quantity and of expiring open interest for one additional S&P 500 price reversal of greater than two standard deviations to occur in the last 15 minutes before the market close. Also, regarding potential impact to S&P 500 component securities, it would take an increase in total P.M.-settled SPX options settlement quantity equal to $20 billion to effect a price movement of only approximately $0.03 for a $200 stock, an increase in expiring open interest in P.M.-settled SPX options equal to $10 billion to effect a price movement less than half a standard deviation, and an increase in total P.M.-settled SPX settlement quantity equal to $7 billion to achieve a price reversal greater two standard deviations.

The study employed the same metrics to determine whether there is greater price volatility for S&P 500 futures, the S&P 500, and the component securities of the S&P 500 related to SPXPM option settlements during an environment of high market volatility (*i.e.,* on days in which the VIX Index was in the top 10% of closing index values) and did not identify indicators of any significant economic impact on these markets near the close as a result of the P.M.-settled SPX options settlement.[27] In addition to this, the DERA staff study, applying the same metrics and analysis as for P.M.-settled SPX options to A.M.-settled SPX options, did not identify any evidence of a statistically significant relationship between settlement quantity or expiring open interest of A.M.-settled options and volatility near the open.

Upon review of the results of the DERA staff study, the Exchange agrees that each of the above-described marginal price movements in S&P 500 futures, the S&P 500, and the S&P 500 component securities affected by increases in P.M.-settled SPX options settlement quantity and expiring open interest appear to be de minimis pricing changes from those that occur over regular trading hours (outside of the last 15 minutes of the trading day). Further, the Exchange has not observed any significant economic impact or other adverse effects on the market from similar reviews of its pilot reports and data submitted after 2018.[28] In its review of a sample of the pilot data from 2019 through 2021, the Exchange similarly measured volatility over the final fifteen minutes of each trading day by taking the standard deviation of rolling one-minute returns of the S&P 500 level (excluding the first and last fifteen minutes of trading) and comparing such with the standard deviation of one-minute returns[29] of the S&P 500 level, over the last 15 minutes of a trading day. The Exchange identified an average standard deviation ratio of 1.42 for the S&P 500 on non-expiration days and an average standard deviation ratio of 1.54 for the S&P 500 on expiration days (a ratio between expiration days and non-expiration days of 1.09). The Exchange also notes that, using the same methodology, it observed that, from 2015 through 2019,[30] the average standard deviation ratio for the S&P 500 on non-expiration days was 1.11 and the average standard deviation ratio for the S&P 500 on expiration days was 1.22 (a ratio between expiration days and non-expiration days of 1.10). While the average standard deviation ratio on both expiration and non-expiration days was higher in 2019 through 2021 due to overall market volatility, the ratios between the standard deviation ratios on expiration days and non-expirations days remained nearly identical between the 2015 through 2019 timeframe and the 2019 through 2021. This shows that, in cases where overall market volatility may increase, the normalized impact on expiration days to non-expiration days generally remains consistent.

In addition to this, the Exchange notes that the S&P 500 is rebalanced quarterly. The changes resulting from each rebalancing coincide with the third-Friday of the quarterly rebalancing month (*i.e.,* March, June, September, October and December)[31] and generally drive an increase in trading activity from investors that seek to track the S&P 500. As such, the Exchange measured volatility on quarterly rebalancing dates and found that the average standard deviation ratio was 1.62, which suggests more closing volatility on quarterly rebalance dates compared to non-quarterly expiration dates (for which the average standard deviation ratio was 1.22), thus indicating that the impact rebalancing may have on the S&P 500 is greater than any impact that P.M.-settled SPX options may have on the S&P 500.

The Exchange additionally focused its study of the post-2018 sample pilot data on reviewing for potential correlation between excess market volatility and price reversals and the hedging activity of liquidity providers. As explained in the DERA staff study, potential impact of P.M.-settled SPX options on the correlated equity markets is thought to stem from the hedging activity of liquidity providers in such options.[32] To determine any such potential correlation, the Exchange studied the expected action of liquidity providers that are the primary source of the hedging on settlement days. These liquidity providers generally delta-hedge their S&P 500 index exposure via S&P 500 futures and on settlement day unwind their futures positions that correspond with the delta of their in-the-money (ITM) expiring P.M.-settled SPX options. Assuming such behavior, the Exchange estimated the Market-On-Close (''MOC'')[33] volume for the shares of the S&P 500 component securities (*i.e.,* ''MOC share volume'') that could ultimately result from the unwinding of the liquidity providers' futures positions by equating the notional value of the futures positions that correspond to expiring ITM open interest to the number S&P 500 component security contracts (based on the weight of each S&P 500 component security). That is, the Exchange calculated (an estimate) of the amount of MOC volume in the S&P 500 component markets attributable hedging activity as a result of expiring ITM P.M.-settled SPX options (*i.e.,* ''hedging MOC''). The Exchange then:

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[26] *See supra* note 22.

[27] The Exchange also notes that the study did not identify any evidence that less liquid S&P 500 constituent securities experienced any greater impact from the settlement of P.M.-settled SPX options.

[28] Total SPX open interest volumes were examined for expiration dates over a roughly two-year period between October 2019 and November 2021.

[29] Calculated at every tick for the prior minute.

[30] November 2015 through November 2021.

[31] *See* S&P Dow Jones Indices, Equity Indices Policies & Practices, Methodology (August 2021), at 15, available at *https://www.spglobal.com/spdji/en/documents/methodologies/methodology-sp-equity-indices-policies-practices.pdf.*

[32] *See* DERA Staff PM Pilot Memo, at 10–12.

[33] MOC orders allow a market participant to trade at the closing price. Market participants generally utilize MOC orders to ensure they exit positions at the end of the trading day.

(1) compared the hedging MOC share volume to all MOC share volume on expiration days and non-expiration trading days; and (2) compared the notional value of the hedging futures positions (*i.e.,* that correspond to expiring ITM P.M.-settled SPX options open interest) to the notional value of expiring ITM P.M.-settled SPX options open interest, the notional value of all expiring P.M.-settled SPX options open interest and the notional value of all P.M.-settled SPX options open interest.

The Exchange observed that, on average, there were approximately 25% more MOC shares executed on expiration days (332 expiration days) than non-expiration days (209 non-expiration days). While, at first glance, the volume of MOC shares executed on expiration days seems much greater than the volume executed on non-expiration days, the Exchange notes that much of this difference is attributable to just eight expiration days—the quarterly index rebalancing dates captured within the scope of the post-2018 sample pilot data. The average MOC share volume on the eight quarterly rebalancing dates was approximately 4.8 times the average MOC share volume on the non-quarterly rebalancing expiration dates; again, indicating that the impact rebalancing may have on the S&P 500 Index is greater than any impact that P.M.-settled SPX options may have on the S&P 500 Index. That is, the Exchange observed that the majority of closing volume on quarterly rebalance dates is driven by rebalancing of shares in in the S&P 500, and not by P.M.-settled SPX options expiration-related hedging activity. Notwithstanding the MOC share volume on quarterly rebalancing dates, the volume of MOC shares executed on expiration days (324 expiration days) was only approximately 13% more than that on non-expiration days, substantially less than the increase in volume over non-expiration days wherein the eight index rebalancing dates are included in expiration day volume. In addition to this, the Exchange observed that the hedging MOC share volume (*i.e.,* the expected MOC share volume resulting from hedging activity in connection with expiring ITM P.M.-settled SPX options) was, on average, less than the MOC share volume on non-expiration days, and was only approximately 20% of the total MOC share volume on expiration days, indicating that other sources of MOC share volume generally exceed the volume resulting from hedging activity of expiring ITM P.M.-settled SPX options and would more likely be a source of any potential market volatility.

The Exchange also observed that, across all third-Friday expirations, the notional value of the hedging futures positions was approximately 25% of the notional value of expiring ITM P.M.-settled SPX options, approximately 3.8% of the notional value of all expiring P.M.-settled SPX options, and approximately only 0.5% of the notional value of all P.M.-settled SPX options. As such, the estimated hedging activity from liquidity providers on expiration days is a fraction of the expiring open interest in P.M.-settled SPX options, which, the Exchange notes, is only 14% of the total open interest in P.M.-settled SPX options; thus, indicating negligible capacity for hedging activity to increase volatility in the underlying markets.

While unrelated to the initial concerns of P.M.-settlement as described above, at the request of the Commission, the Exchange recently completed an analysis intended to evaluate whether the introduction of P.M.-settled options impacted the quality of the A.M.-settled option market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread [34] and effective spread [35]) in SPXW options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.[36] Options on the Standard & Poor's Depositary Receipts S&P 500 ETF (''SPY'') were used as a control group to account for any market factors that might influence key market quality indicators. The Exchange used data from January 3, 2022 through March 4, 2022 (the two-month period prior to the introduction of SPXW options with Tuesday expirations) and data from May 11, 2022 to July 10, 2022 (the two-month period following the introduction of SPXW options with Thursday expirations).[37]

Given the time that as passed since the introduction of FLEX P.M.-settled options, the Exchange is unable to analyze whether the introduction of those options significantly impacted the market quality of FLEX P.M.-settled options. Additionally, the Exchange is unable to analyze whether the introduction of the FLEX P.M.-settled options significantly impacted the market quality of A.M.-settled FLEX options, as there is no book for FLEX options, as FLEX options are listed only if and when market participants create them for trading. However, the Exchange believes analyzing whether the introduction of new SPXW P.M.-settled expirations (*i.e.,* SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW P.M.-settled expirations (*i.e.,* SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of P.M.-settled index options impacted the market quality of the underlying cash markets when the pilot began. The full analysis is included in Exhibit 3 of this rule filing.

As a result of this analysis, the Exchange believes the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations. With respect to the majority of series analyzed, the Exchange observed no statistically significant difference in the bid-ask spread or the effective spread of the series in the period prior to introduction of the Tuesday and Thursday expirations and the period following the introduction of the Tuesday and Thursday expirations. While statistically insignificant, the Exchange notes that in many series, particularly as they were closer to expiration, the Exchange observed that the values of these spreads decreased during the period following the introduction of the Tuesday and Thursday expirations.[38]

To further note, given the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, the Exchange believes that the risks of any potential impact of P.M.-, cash-settled

[34] The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

[35] The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

[36] For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

[37] The Exchange observed comparable market volatility levels during the pre-intervention and post-intervention time ranges.

[38] In any series in which the Exchange observed an increase in the market quality indicators, the Exchange notes any such increase was also statistically insignificant.

FLEX options on the underlying cash markets are also de minimis.

The Exchange proposes to make the FLEX PM Third Friday Program permanent as P.M.-settled index products have become an integral part of the Exchange's product offerings, providing investors with greater trading opportunities and flexibility. As indicated by the significant growth in the size of the market for P.M.-settled options, such options have been, and continue to be, well-received and widely used by market participants. Therefore, the Exchange wishes to be able to continue to provide investors with the ability to trade FLEX PM options on a permanent basis. The Exchange believes that the permanent continuation of the FLEX PM Third Friday Pilot Program will serve to maintain the status quo by continuing to offer a product to which investors have become accustomed and have incorporated into their business models and day-to-day trading methodologies for nearly ten years. As such, the Exchange also believes that ceasing to offer FLEX PM options may result in significant market disruption and investor confusion. The Exchange has not identified any significant impact on market quality nor any unique or prohibitive regulatory concerns as a result of the FLEX PM Third Friday Pilot Program, and, as such, the Exchange believes that the continuation of the FLEX PM Third Friday Pilot Program as a pilot, including the use of time and resources to compile and analyze quarterly and annual pilot reports and pilot data, is no longer necessary and that making the FLEX PM Third Friday Pilot Program permanent will allow the Exchange to otherwise allocate time and resources to other industry initiatives.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[39] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[40] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the making the FLEX PM Third Friday Pilot Program permanent will allow the Exchange to be able to continue to offer FLEX PM options on a continuous and permanent basis. These products have been, and continue to be, well-received and widely used by market participants, providing investors with greater trading opportunities and flexibility. The Exchange believes that the permanent continuation of the FLEX PM Third Friday Pilot Program will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by continuing to offer a product to which investors have become accustomed and have incorporated into their business models and day-to-day trading strategies for approximately 13 years. The Exchange believes ceasing to offer the FLEX PM Third Friday Pilot Program may result in significant market disruption and investor confusion, as P.M.-settled index products, particularly SPX options, have become an integral part of the Exchange's product offerings, providing investors with greater trading opportunities and flexibility.

The Exchange further believes that making the FLEX PM Third Friday Pilot Program permanent will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, while maintaining a fair and orderly market, as the Exchange believes that previous concerns (arising in the 1980s) regarding options expirations potentially contributing to excess volatility and reversals around the close have been adequately diminished. As described in detail above, the Exchange has observed no significant adverse market impact or identified any meaningful regulatory concerns during the approximately 13-year operation of the FLEX PM Third Friday Program as a pilot nor during the 15 years since P.M.-settled index options (SPX) were reintroduced to the marketplace.[41] Notably, the Exchange did not identify any significant economic impact (including on pricing or volatility or in connection with reversals) on related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close as a result of the quantity of P.M.-settled FLEX options that settle at the close or the amount of expiring open interest in P.M.-settled FLEX options, nor any demonstrated capacity for options hedging activity to impact volatility in the underlying markets. While the DERA staff study and corresponding Exchange study described above specifically evaluated SPX options, P.M.-settled FLEX options overlay broad-based indexes (including the S&P 500), the Exchange believes it is appropriate to extrapolate the data to apply the FLEX PM options. This is particularly true given that the reports submitted by the Exchange during the pilot period have similarly demonstrated no significant economic impact on the respective underlying indexes or other products.

The Exchange also believes the introduction of FLEX PM options had no significant impact on the market quality of corresponding A.M.-settled options or other options. The Exchange believes this as a result of its analysis conducted after the introduction of SPXW options with Tuesday and Thursday expirations, which demonstrated no statistically significant impact on the bid-ask or effective spreads of SPXW options with Monday, Wednesday, and Friday expirations after trading in the SPXW options with Tuesday and Thursday expirations began. FLEX options are nearly identical to non-FLEX options and overlay the same indexes. Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate from this data that it is unlikely the introduction of P.M.-settled FLEX options significantly impacted the market quality of A.M.-settled options when the pilot began.

Additionally, the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, has significantly minimized risks of any potential impact of P.M.-, cash-settled FLEX options on the underlying cash markets. As such, the Exchange believes that a permanent FLEX PM Third Friday Pilot Program does not raise any unique or prohibitive regulatory concerns and that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying indexes or their component securities. Further, as the Exchange has not identified any significant impact on market quality or any unique or prohibitive regulatory concerns as a result of offering FLEX PM options, the

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

[41] *See supra* notes 18–31.

Exchange believes that the continuation of the FLEX PM Third Friday Pilot Program as a pilot, including the gathering, submission and review of the pilot reports and data, is no longer necessary and that making the FLEX PM Third Friday Pilot Program permanent will allow the Exchange to otherwise allocate time and resources to other industry initiatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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 does not believe that making the FLEX PM Third Friday Pilot Program permanent will impose any unnecessary or inappropriate burden on intramarket competition because FLEX PM options will continue to be available to all market participants who wish to participate in the FLEX PM options market. The Exchange believes that the growth that the P.M.-settled options market, including FLEX PM options, has experienced since their reintroduction through pilot programs indicates strong, continued investor interest and demand, warranting a permanent FLEX PM Third Friday Pilot Program. The Exchange believes that, for the period that P.M.-settled FLEX options have been in operation as pilot programs, they have provided investors with a desirable product with which to trade and wishes to permanently offer this product to investors. Furthermore, during the pilot period, the Exchange has not observed any significant adverse market effects nor identified any regulatory concerns as a result of the FLEX PM Third Friday Pilot Program, and, as such, the continuation of the FLEX PM Third Friday Pilot Program as a pilot, including the gathering, submission and review of the pilot reports and data, is no longer necessary—a permanent FLEX PM Third Friday Pilot Program will allow the Exchange to otherwise allocate time and resources to other industry initiatives.

The Exchange further does not believe that making the FLEX PM Third Friday Pilot Program permanent will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies to a class of options listed only for trading on Cboe Options. The Exchange notes that other exchanges are free to and do offer competing products. To the extent that the permanent offering and continued trading of FLEX PM options may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–018. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–018, and should be submitted on or before May 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08987 Filed 4–27–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97366; File No. SR–CBOE–2023–019]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Make Permanent the Operation of Its Program ("Pilot Program") That Allows the Exchange To List P.M.-Settled Third Friday-of-the-Month Mini-SPX Index ("XSP") Options and Mini-Russell 2000 Index ("MRUT") Options Series

April 24, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to make permanent the operation of its program (''Pilot Program'') that allows the Exchange to list P.M.-settled third Friday-of-the-month Mini-SPX Index (''XSP'') options and Mini-Russell 2000 Index (''MRUT'') options series. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 4.13. Series of Index Options

* * * * *

Interpretations and Policies

.01–.12 No change.

[based on currently effective rule text]

.13 In addition to A.M.-settled S&P 500 Stock Index (''SPX'') options*, Mini-SPX Index (''XSP'') options, and Mini-RUT Index (''MRUT'') options* approved for trading on the Exchange pursuant to Rule 4.13, the Exchange may also list options on SPX*, XSP, and MRUT* whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series). [The Exchange may also list options on the Mini-SPX Index (''XSP'') and Mini-RUT Index (''MRUT'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). P.M.-settled third Friday-of-the-month SPX options series and P.M.-settled XSP and MRUT options will be listed for trading for a pilot period ending May 8, 2023.]

[based on rule text if SR–CBOE–2023–005 is approved]

.13 In addition to A.M.-settled S&P 500 Stock Index (''SPX'') options approved for trading on the Exchange pursuant to Rule 4.13, the Exchange may also list options on SPX whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (P.M.-settled third Friday-of-the-month SPX options series).

.14 *In addition to A.M.-settled Mini-SPX Index (''XSP'') options and Mini-RUT Index (''MRUT'') options approved for trading on the Exchange pursuant to Rule 4.13, t*[T]he Exchange may list *XSP and MRUT* options [on the Mini-SPX Index (''XSP'') and Mini-RUT Index (''MRUT'')] whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). [P.M.-settled XSP and MRUT options will be listed for trading for a pilot period ending May 8, 2023.]

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent its Pilot Program that permits the Exchange to list XSP and MRUT options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled''). The Securities and Exchange Commission (the ''Commission'') approved a rule change that established the Pilot Program to allow the Exchange to list options on the S&P 500 Index (''SPX'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'') on February 8, 2013.[3] On July 31, 2013, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list XSP options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled XSP'').[4] On February 5, 2021, the Commission approved a rule change that amended the Pilot Program to allow the Exchange to list options on the MRUT options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''P.M.-settled MRUT'') [5] (together, P.M.-settled XSP and P.M.-settled MRUT to be referred to herein as the ''Pilot Products'').[6] The Exchange has extended the pilot period numerous times, which, pursuant to Rule 4.13.13, is currently set to expire on the earlier of May 8, 2023 or the date on which the pilot program is approved on a permanent basis.[7] The Exchange hereby requests that the Commission approve the Pilot Program for the Pilot Products on a permanent basis.[8]

By way of background, when cash-settled [9] index options were first

[3] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[4] *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055) (the ''P.M.-settled XSP Approval Order'').

[5] *See* Securities Exchange Act Release No. 91067 (February 5, 2021), 86 FR 9108 (SR–2020–CBOE–116) (the ''P.M.-settled MRUT Approval Order'').

[6] For more information on the Pilot Products or the Pilot Program, *see* the P.M.-settled XSP Approval Order and the P.M.-settled MRUT Approval Order.

[7] *See* Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR–CBOE–2014–004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR–CBOE–2014–076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR–CBOE–2016–036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR–CBOE–2017–025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR–CBOE–2018–036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR–CBOE–2018–069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR–CBOE–2019–023); 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR–CBOE–2019–107); 88674 (April 16, 2020), 85 FR 22479 (April 22, 2020) (SR–CBOE–2020–036); 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (SR–CBOE–2020–100); 91698 (April 28, 2021), 86 FR 23761 (May 4, 2021) (SR–CBOE–2021–027); 93455 (October 28, 2021), 86 FR 60660 (November 3, 2021) (SR–CBOE–2021–062); *and* 94799 (April 27, 2022), 87 FR 26244 (May 3, 2022) (SR–CBOE–2022–019).

[8] The Exchange notes that it also proposes nonsubstantive changes to the rule text to conform the language to that for SPXPM (by referencing the corresponding A.M.-settled products). As noted above, the Exchange submitted a previous rule filing to propose to make the SPXPM Pilot Program permanent, which is still pending at the Commission. This rule filing proposes changes to the rule text that reflect both currently effective rule text and the rule text if that other rule filing is approved by the Commission.

[9] The seller of a ''cash-settled'' index option pays out the cash value of the applicable index on expiration or exercise. A ''physically settled'' option, like equity and ETF options, involves the transfer of the underlying asset rather than cash.

introduced in the 1980s, settlement was based on the closing value of the underlying index on the option's expiration date. The Commission later became concerned about the impact of P.M.-settled, cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays. Specifically, certain episodes of price reversals around the close on quarterly expiration dates attracted the attention of regulators to the possibility that the simultaneous expiration of index futures, futures options, and options might be inducing abnormal volatility in the index value around the close.[10] Academic research at the time provided at least some evidence suggesting that futures and options expirations contributed to excess volatility and reversals around the close on those days.[11] In light of the concerns with P.M.-settlement and to help ameliorate the price effects associated with expirations of P.M.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission (''CFTC'') approved a rule change by the Chicago Mercantile Exchange (''CME'') to provide for A.M. settlement [12] for index futures, including futures on the S&P 500.[13] The Commission subsequently approved a rule change by Cboe Options to list and trade A.M.-settled SPX options.[14] In 1992, the Commission approved Cboe Options' proposal to transition all of its European-style cash-settled options on the S&P 500 Index to A.M. settlement; [15] however, in 1993, the Commission approved a rule allowing Cboe Options to list P.M.-settled options on certain broad-based indices, including the S&P 500 Index, expiring at the end of each calendar quarter (''Quarterly Index Expirations'') (since adopted as permanent).[16] Starting in 2006, the Commission approved numerous rule changes, on a pilot basis, permitting Cboe Options to introduce other index options, including SPX options, with P.M.-settlement. These include P.M.-settled index options expiring weekly (other than the third Friday) and at the end of each month (''EOM''),[17] SPXPM,[18] as well as the Pilot Products.[19]

As stated above, since their inceptions in 2016 and 2020, the Exchange has continuously extended the P.M.-settled XSP Pilot Program and the P.M.-settled MRUT Pilot Program, respectively, and, during the course of the these Pilot Programs and in support of the extensions of these Pilot Programs, the Exchange has submitted reports to the Commission regarding the Pilot Programs that detail the Exchange's experience with the Pilot Programs, pursuant to the P.M.-settled XSP Approval Order and the P.M.-settled MRUT Approval Order (together, the ''Pilot Product Approval Orders'').[20] Specifically, the Exchange has submitted annual Pilot Programs reports to the Commission that contain an analysis of volume, open interest, and trading patterns. The analysis examines trading in the Pilot Products, as well as trading in the securities that comprise the underlying indexes. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange has also submitted periodic interim reports that contain some, but not all, of the information contained in the annual reports (together with the periodic interim reports, the ''pilot reports'').[21]

The pilot reports contained the following volume and open interest data:

(1) monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

The annual reports also contained the information noted in Items (1) through (6) above for SPX and Expiration Friday, A.M.-settled RUT index options traded on Cboe Options, as well as the following analysis of trading patterns in the Pilot Products options series in the Pilot Program:

(1) a time series analysis of open interest; and

(2) an analysis of the distribution of trade sizes.

Finally, for series that exceed certain minimum parameters,[22] the annual reports contained the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) a comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data includes a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the Cboe Volatility Index (VIX), is provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data includes a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

Also, during the course of the Pilot Products Pilot Programs, the Exchange provided the Commission with any additional data or analyses the

See Characteristics and Risks of Standardized Options, available at: *https://www.theocc.com/Company-Information/Documents-and-Archives/Options-Disclosure-Document.*

[10] The close of trading on the quarterly expiration Friday (*i.e.,* the third Friday of March, June, September and December), when options, index futures, and options on index futures all expire simultaneously, became known as the ''triple witching hour.''

[11] *See* Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (''DERA Staff PM Pilot Memo'') at 5, available at: *https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf.*

[12] The exercise settlement value for an A.M.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

[13] *See* Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR–CBOE–87–11) (noting that CME moved S&P 500 futures contract's settlement value to opening prices on the delivery date).

[14] *See id.*

[15] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09). Thereafter, the Commission approved proposals by the options markets to transfer most of their cash-settled index products to A.M. settlement.

[16] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13); *and see* Rule 4.13(a)(2)(B); *see also* Securities Exchange Act Release Nos. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65); *and* 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR–CBOE–2009–029).

[17] *See* Securities Exchange Act Release Nos. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR–CBOE–2009–075); 76529 (November 30, 2015), 80 FR 75695 (December 3, 2015) (SR–CBOE–2015–106); 78132 (June 22, 2016), 81 FR 42018 (June 28, 2016) (SR–CBOE–2016–046); 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (SR–CBOE–2016–046); 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (SR–CBOE–2022–005); and 95795 (September 15, 2022), 87 FR 57745 (September 21, 2022) (SR–CBOE–2022–039).

[18] *See* SPXPM Approval Order.

[19] *See* P.M.-settled XSP Approval Order and the P.M.-settled MRUT Approval Order.

[20] *See supra* notes 3 and 4.

[21] In providing the pilot reports to the Commission, the Exchange previously requested confidential treatment of the pilot reports under the Freedom of Information Act (''FOIA''). *See* 5 U.S.C. 552.

[22] The Exchange and the Commission determined the minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods.

Commission requested if it deemed such data or analyses necessary to determine whether the Pilot Programs were consistent with the Exchange Act. The Exchange has made public on its website all data and analyses previously submitted to the Commission under the Pilot Programs,[23] and will continue to make public any data and analyses it submits to the Commission while the Pilot Products Pilot Programs are still in effect.

The Exchange has concluded that the Pilot Products Pilot Program does not negatively impact market quality or raise any unique or prohibitive regulatory concerns. The Exchange has not identified any evidence from the pilot data indicating that the trading of P.M.-settled XSP or MRUT options has any adverse impact on fair and orderly markets on Expiration Fridays for the Mini-SPX Index, the Mini-RUT Index or the underlying securities comprising the underlying indexes, nor have there been any observations of abnormal market movements attributable to P.M.-settled XSP or MRUT options from any market participants that have come to the attention of the Exchange.

Based on a study conducted by the Commission's Division of Economic and Risk Analysis (''DERA'') staff on the pilot data from 2006 through 2018,[24] and the Exchange's review of the pilot data from 2019 through 2021, the size of the market for P.M.-settled SPX options (including quarterly, weekly, EOM and third Friday expirations) since 2007 has grown from a trivial portion of the overall market to a substantial share (from around 0.1% of open interest in 2007 to 30% in 2021).[25] Notional value of open interest in P.M.-settled SPX options increased from approximately a median of $1.5 billion in 2007 to $1.9 trillion in 2021, approximately 1260 times its value in 2007. Notional open interest in A.M.-settled SPX options was already hovering around a median of $1.4 trillion in 2007, and it has since increased to approximately $4.4 trillion in 2021. It is also important to note that open interest on expiring P.M.-settled SPX options, as compared to A.M.-settled options, is spread out across a greater number of expiration dates, which results in a smaller percentage of open interest expiring on any one date, thus mitigating concerns that SPXPM option expiration may have a disruptive effect on the market.[26] Daily trading volume in P.M.-settled SPX options has increased from a median of about 700 contracts in 2007 to nearly 1.9 million contracts in 2021,[27] and now exceeds trading volume in A.M.-settled SPX options.

Moreover, the DERA staff study of the P.M.-settled SPX options pilot data (2006 through 2018) did not identify any significant economic impact on S&P 500 futures,[28] the S&P 500, or the underlying component securities of the S&P 500 surrounding the close. For purposes of the study, volatility was by and large measured by using the standard deviation[29] of one-minute returns of S&P 500 futures values and the index value during regular hours on each day reviewed (excluding the first and last 15 minutes of trading) and then compared with the standard deviation of one-minute returns (for S&P 500 futures, the S&P 500, and the underlying component securities of the S&P 500) over the last 15 minutes of a trading day.[30] Using this as a general measure,[31] the DERA staff study then reviewed whether, and to what extent, the settlement quantity of SPXPM options and the levels of open interest in SPXPM options on expiration days (as compared to non-expiration days) may be associated with general price volatility and price reversals for S&P 500 futures, the S&P 500, and the underlying component securities of the S&P 500 near the close. From its review of the study, the Exchange agrees that, although volatility before the market close is generally higher than during the rest of the trading day, there is no evidence of any significant adverse economic impact to the futures, index, or underlying index component securities markets as a result of the quantity of P.M.-settled SPX options that settle at the close or the amount of expiring open interest in P.M.-settled SPX options. For example, the largest settlement event that occurred during the time period of the study (a settlement of $100.4 billion of notional on December 29, 2017) had an estimated impact on the futures price of only approximately 0.02% (a predicted impact of $0.54 relative to a closing futures price of $2,677).

In particular, the DERA staff study found that an additional P.M.-settled SPX options settlement quantity equal to $10 billion in notional value is associated with a marginal impact on futures prices during the last 15 minutes of the trading day of only about $0.06 (where the hypothetical index level is 2,500), additional expiring open interest in P.M.-settled SPX options equal to $10 billion in notional value is associated with a marginal impact on futures prices during the last 15 minutes of the trading day of only about $0.05 (assumed index level is 2,500). Also, an additional increase in settlement quantity or in expiring open interest, each equal to $20 million in notional value, did not result in any meaningful futures price reversals near the close (neither was found to cause a price reversal of over one standard deviation[32]).

Likewise, the study identified that an additional total P.M.-settled SPX options settlement quantity equal to $10 billion in notional value corresponds to price movement in the S&P 500 of only about $0.08 (assuming an index level of 2,500) during the last 15 minutes of the trading day, and that additional expiring open interest equal to $10 billion in notional value corresponds to a price movement in the S&P 500 of only about

[23] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data.*

[24] *See* DERA Staff PM Pilot Memo, at 13 (''Option settlement quantity data for A.M.- and P.M.-settled options were obtained from the Cboe, including the number of contracts that settled in-the-money for each exchange-traded option series on the S&P 500 index . . . on expiration days from January 20, 2006 through December 31, 2018. Daily open interest and volume data for [SPX] option series were also obtained from Cboe, including open interest data from January 3, 2006 through December 31, 2018 and trading volume data from January 3, 2006 through December 31, 2018.'')

[25] The DERA staff study reviewed and provided statistics for market share, median notional value of open interest and median volume in 2007 and in 2018. The Exchange provides updated statistics for market share, median notional value of open interest and median volume in 2021, replacing the 2018 statistics provided in the Commission staff study.

[26] *See* DERA Staff PM Pilot Memo, at 2.

[27] The Exchange notes that the DERA staff study used two-sided volume data for the median volume in 2007 and in 2018; therefore, the Exchange provides two-sided volume data for the median volume in 2021.

[28] Futures on the S&P 500 experience high volume and liquidity both before and after the close of the underlying market. Therefore, futures are a useful measure of abnormal volatility surrounding the close and the open. *See* DERA Staff PM Pilot Memo, at 14. The Exchange agrees with this approach.

[29] Standard deviation applied to a rate of return (in this case, one-minute) of an instrument can indicate that instrument's historical volatility. The greater the standard deviation, the greater the variance between price and the mean, which indicates a larger price range, *i.e.,* higher volatility.

[30] For example, if on a particular day the standard deviation of one-minute returns between 3:45 p.m. ET and 4:00 p.m. ET is 0.004 and the standard deviation of returns from 9:45 a.m. ET to 3:45 p.m. ET is 0.002, this metric would take on a value of 2 for that day, indicating that volatility during the last 15 minutes of the trading day was twice as high as it was during the rest of the trading day. *See* DERA Staff PM Pilot Memo, at 15; *see also* DERA Staff PM Pilot Memo, at Section V, which discusses in detail the metrics used to measure, for the purposes of the study, the extent to which the market may experience abnormal volatility surrounding SPXPM option settlement.

[31] *See* DERA Staff PM Pilot Memo, at Section V, which discusses in detail the metrics used to measure, for the purposes of the study, the extent to which the market may experience abnormal volatility surrounding SPXPM option settlement.

[32] *See supra* note 27.

$0.06 (assuming an index level of 2,500) during the last 15 minutes of the trading day. The study also identified that it would take an increase of $34 billion in notional value of total settlement quantity and of expiring open interest for one additional S&P 500 price reversal of greater than two standard deviations to occur in the last 15 minutes before the market close. Also, regarding potential impact to S&P 500 component securities, it would take an increase in total P.M.-settled SPX options settlement quantity equal to $20 billion to effect a price movement of only approximately $0.03 for a $200 stock, an increase in expiring open interest in P.M.-settled SPX options equal to $10 billion to effect a price movement less than half a standard deviation, and an increase in total P.M.-settled SPX settlement quantity equal to $7 billion to achieve a price reversal greater two standard deviations.

The study employed the same metrics to determine whether there is greater price volatility for S&P 500 futures, the S&P 500, and the component securities of the S&P 500 related to SPXPM option settlements during an environment of high market volatility (*i.e.,* on days in which the VIX Index was in the top 10% of closing index values) and did not identify indicators of any significant economic impact on these markets near the close as a result of the P.M.-settled SPX options settlement.[33] In addition to this, the DERA staff study, applying the same metrics and analysis as for P.M.-settled SPX options to A.M.-settled SPX options, did not identify any evidence of a statistically significant relationship between settlement quantity or expiring open interest of A.M.-settled options and volatility near the open.

Upon review of the results of the DERA staff study, the Exchange agrees that each of the above-described marginal price movements in S&P 500 futures, the S&P 500, and the S&P 500 component securities affected by increases in P.M.-settled SPX options settlement quantity and expiring open interest appear to be de minimis pricing changes from those that occur over regular trading hours (outside of the last 15 minutes of the trading day). Further, the Exchange has not observed any significant economic impact or other adverse effects on the market from similar reviews of its pilot reports and data submitted after 2018.[34] In its review of a sample of the pilot data from 2019 through 2021, the Exchange similarly measured volatility over the final fifteen minutes of each trading day by taking the standard deviation of rolling one-minute returns of the S&P 500 level (excluding the first and last fifteen minutes of trading) and comparing such with the standard deviation of one-minute returns[35] of the S&P 500 level, over the last 15 minutes of a trading day. The Exchange identified an average standard deviation ratio of 1.42 for the S&P 500 on non-expiration days and an average standard deviation ratio of 1.54 for the S&P 500 on expiration days (a ratio between expiration days and non-expiration days of 1.09). The Exchange also notes that, using the same methodology, it observed that, from 2015 through 2019,[36] the average standard deviation ratio for the S&P 500 on non-expiration days was 1.11 and the average standard deviation ratio for the S&P 500 on expiration days was 1.22 (a ratio between expiration days and non-expiration days of 1.10). While the average standard deviation ratio on both expiration and non-expiration days was higher in 2019 through 2021 due to overall market volatility, the ratios between the standard deviation ratios on expiration days and non-expirations days remained nearly identical between the 2015 through 2019 timeframe and the 2019 through 2021. This shows that, in cases where overall market volatility may increase, the normalized impact on expiration days to non-expiration days generally remains consistent.

In addition to this, the Exchange notes that the S&P 500 is rebalanced quarterly. The changes resulting from each rebalancing coincide with the third-Friday of the quarterly rebalancing month (*i.e.,* March, June, September, October and December)[37] and generally drive an increase in trading activity from investors that seek to track the S&P 500. As such, the Exchange measured volatility on quarterly rebalancing dates and found that the average standard deviation ratio was 1.62, which suggests more closing volatility on quarterly rebalance dates compared to non-quarterly expiration dates (for which the average standard deviation ratio was 1.22), thus indicating that the impact rebalancing may have on the S&P 500 is greater than any impact that P.M.-settled SPX options may have on the S&P 500.

The Exchange additionally focused its study of the post-2018 sample pilot data on reviewing for potential correlation between excess market volatility and price reversals and the hedging activity of liquidity providers. As explained in the DERA staff study, potential impact of P.M.-settled SPX options on the correlated equity markets is thought to stem from the hedging activity of liquidity providers in such options.[38] To determine any such potential correlation, the Exchange studied the expected action of liquidity providers that are the primary source of the hedging on settlement days. These liquidity providers generally delta-hedge their S&P 500 index exposure via S&P 500 futures and on settlement day unwind their futures positions that correspond with the delta of their in-the-money (ITM) expiring P.M.-settled SPX options. Assuming such behavior, the Exchange estimated the Market-On-Close (''MOC'')[39] volume for the shares of the S&P 500 component securities (*i.e.,* ''MOC share volume'') that could ultimately result from the unwinding of the liquidity providers' futures positions by equating the notional value of the futures positions that correspond to expiring ITM open interest to the number S&P 500 component security contracts (based on the weight of each S&P 500 component security). That is, the Exchange calculated (an estimate) of the amount of MOC volume in the S&P 500 component markets attributable hedging activity as a result of expiring ITM P.M.-settled SPX options (*i.e.,* ''hedging MOC''). The Exchange then: (1) compared the hedging MOC share volume to all MOC share volume on expiration days and non-expiration trading days; and (2) compared the notional value of the hedging futures positions (*i.e.,* that correspond to expiring ITM P.M.-settled SPX options open interest) to the notional value of expiring ITM P.M.-settled SPX options open interest, the notional value of all expiring P.M.-settled SPX options open interest and the notional value of all P.M.-settled SPX options open interest.

The Exchange observed that, on average, there were approximately 25% more MOC shares executed on expiration days (332 expiration days) than non-expiration days (209 non-expiration days). While, at first glance, the volume of MOC shares executed on

[33] The Exchange also notes that the study did not identify any evidence that less liquid S&P 500 constituent securities experienced any greater impact from the settlement of P.M.-settled SPX options.

[34] Total SPX open interest volumes were examined for expiration dates over a roughly two-year period between October 2019 and November 2021.

[35] Calculated at every tick for the prior minute.

[36] November 2015 through November 2021.

[37] *See* S&P Dow Jones Indices, Equity Indices Policies & Practices, Methodology (August 2021), at 15, available at *https://www.spglobal.com/spdji/en/documents/methodologies/methodology-sp-equity-indices-policies-practices.pdf.*

[38] *See* DERA Staff PM Pilot Memo, at 10–12.

[39] MOC orders allow a market participant to trade at the closing price. Market participants generally utilize MOC orders to ensure they exit positions at the end of the trading day.

expiration days seems much greater than the volume executed on non-expiration days, the Exchange notes that much of this difference is attributable to just eight expiration days—the quarterly index rebalancing dates captured within the scope of the post-2018 sample pilot data. The average MOC share volume on the eight quarterly rebalancing dates was approximately 4.8 times the average MOC share volume on the non-quarterly rebalancing expiration dates; again, indicating that the impact rebalancing may have on the S&P 500 Index is greater than any impact that P.M.-settled SPX options may have on the S&P 500 Index. That is, the Exchange observed that the majority of closing volume on quarterly rebalance dates is driven by rebalancing of shares in in the S&P 500, and not by P.M.-settled SPX options expiration-related hedging activity. Notwithstanding the MOC share volume on quarterly rebalancing dates, the volume of MOC shares executed on expiration days (324 expiration days) was only approximately 13% more than that on non-expiration days, substantially less than the increase in volume over non-expiration days wherein the eight index rebalancing dates are included in expiration day volume. In addition to this, the Exchange observed that the hedging MOC share volume (*i.e.,* the expected MOC share volume resulting from hedging activity in connection with expiring ITM P.M.-settled SPX options) was, on average, less than the MOC share volume on non-expiration days, and was only approximately 20% of the total MOC share volume on expiration days, indicating that other sources of MOC share volume generally exceed the volume resulting from hedging activity of expiring ITM P.M.-settled SPX options and would more likely be a source of any potential market volatility.

The Exchange also observed that, across all third-Friday expirations, the notional value of the hedging futures positions was approximately 25% of the notional value of expiring ITM P.M.-settled SPX options, approximately 3.8% of the notional value of all expiring P.M.-settled SPX options, and approximately only 0.5% of the notional value of all P.M.-settled SPX options. As such, the estimated hedging activity from liquidity providers on expiration days is a fraction of the expiring open interest in P.M.-settled SPX options, which, the Exchange notes, is only 14% of the total open interest in P.M.-settled SPX options; thus, indicating negligible capacity for hedging activity to increase volatility in the underlying markets.

While unrelated to the initial concerns of P.M.-settlement as described above, at the request of the Commission, the Exchange recently completed an analysis intended to evaluate whether the introduction of P.M.-settled options impacted the quality of the A.M.-settled option market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread [40] and effective spread [41]) in SPXW options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.[42] Options on the Standard & Poor's Depositary Receipts S&P 500 ETF (''SPY'') were used as a control group to account for any market factors that might influence key market quality indicators. The Exchange used data from January 3, 2022 through March 4, 2022 (the two-month period prior to the introduction of SPXW options with Tuesday expirations) and data from May 11, 2022 to July 10, 2022 (the two-month period following the introduction of SPXW options with Thursday expirations).[43]

Given the time that as passed since the introduction of the Pilot Products, the Exchange is unable to analyze whether the introduction of Pilot Products significantly impacted the market quality of A.M.-settled options. Additionally, the Exchange is unable to analyze whether the introduction of the Pilot Products significantly impacted the market quality of A.M.-settled XSP or MRUT options, as applicable (which the Exchange does not list for trading). However, the Exchange believes analyzing whether the introduction of new SPXW P.M.-settled expirations (*i.e.,* SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW P.M.-settled expirations (*i.e.,* SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of P.M.-settled index options impacted the market quality of the underlying cash markets when the pilot began. The full analysis is included in Exhibit 3 of this rule filing.

As a result of this analysis, the Exchange believes the introduction of SPX options with Tuesday and Thursday options had no significant impact on the market quality of SPXW options with Monday, Wednesday, and Friday expirations. With respect to the majority of series analyzed, the Exchange observed no statistically significant difference in the bid-ask spread or the effective spread of the series in the period prior to introduction of the Tuesday and Thursday expirations and the period following the introduction of the Tuesday and Thursday expirations. While statistically insignificant, the Exchange notes that in many series, particularly as they were closer to expiration, the Exchange observed that the values of these spreads decreased during the period following the introduction of the Tuesday and Thursday expirations.[44]

To further note, given the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, the Exchange believes that the risks of any potential impact of P.M.-, cash-settled XSP or MRUT options on the underlying cash markets are also de minimis.

The Exchange proposes to make the Pilot Products Pilot Programs permanent as P.M.-settled index products have become an integral part of the Exchange's product offerings, providing investors with greater trading opportunities and flexibility. As indicated by the significant growth in the size of the market for P.M.-settled options, such options have been, and continue to be, well-received and widely used by market participants. Therefore, the Exchange wishes to be able to continue to provide investors with the ability to trade the Pilot Products on a permanent basis.[45] The Exchange believes that the permanent continuation of the Pilot Products will serve to maintain the status quo by continuing to offer products to which

[40] The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

[41] The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

[42] For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

[43] The Exchange observed comparable market volatility levels during the pre-intervention and post-intervention time ranges.

[44] In any series in which the Exchange observed an increase in the market quality indicators, the Exchange notes any such increase was also statistically insignificant.

[45] As noted above, the Exchange does not list A.M.-settled XSP or MRUT options for trading, just P.M.-settled.

investors have become accustomed and have incorporated into their business models and day-to-day trading methodologies for nearly ten years. As such, the Exchange also believes that ceasing to offer the Pilot Products options may result in significant market disruption and investor confusion. The Exchange has not identified any significant impact on market quality nor any unique or prohibitive regulatory concerns as a result of the Pilot Products Pilot Programs, and, as such, the Exchange believes that the continuation of the Pilot Products Programs as pilots, including the use of time and resources to compile and analyze quarterly and annual pilot reports and pilot data, is no longer necessary and that making the Pilot Products Pilot Programs permanent will allow the Exchange to otherwise allocate time and resources to other industry initiatives.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[46] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[47] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that the making the Pilot Products Pilot Programs permanent will allow the Exchange to be able to continue to offer the Pilot Products on a continuous and permanent basis. These products have been, and continue to be, well-received and widely used by market participants, providing investors with greater trading opportunities and flexibility. The Exchange believes that the permanent continuation of the Pilot Products Pilot Programs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by continuing to offer products to which investors have become accustomed and have incorporated into their business models and day-to-day trading strategies for nearly seven (XSP) and three (MRUT) years. The Exchange believes ceasing to offer the Pilot Products may result in significant market disruption and investor confusion, as P.M.-settled index products have become an integral part of the Exchange's product offerings (the Exchange does not list A.M.-settled XSP and MRUT options), providing investors with greater trading opportunities and flexibility.

The Exchange further believes that making the Pilot Products Pilot Programs permanent will remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, while maintaining a fair and orderly market, as the Exchange believes that previous concerns (arising in the 1980s) regarding options expirations potentially contributing to excess volatility and reversals around the close have been adequately diminished. As described in detail above, the Exchange has observed no significant adverse market impact or identified any meaningful regulatory concerns during the multi-year operation of the Pilot Products Pilot Programs as a pilot nor during the 15 years since P.M.-settled index options (SPX) were reintroduced to the marketplace.[48] Notably, the Exchange did not identify any significant economic impact (including on pricing or volatility or in connection with reversals) on the related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close as a result of the quantity of P.M.-settled index options that settle at the close or the amount of expiring open interest in P.M.-settled index options, nor any demonstrated capacity for options hedging activity to impact volatility in the underlying markets. While the DERA staff study and corresponding Exchange study described above specifically evaluated SPX options, because XSP options overly the same index comprised of the same securities (just one tenth the size) and MRUT is also a broad-based index, the Exchange believes it is appropriate to extrapolate the data to apply the Pilot Products. This is particularly true given that the reports submitted by the Exchange during the pilot period have similarly demonstrated no significant economic impact on the respective underlying indexes or other products.

The Exchange also believes the introduction of P.M.-settled XSP and MRUT options had no significant impact on the market quality of corresponding A.M.-settled options (as the Exchange does not list those) or other options (such as A.M.-settled SPX or RUT options). The Exchange believes this as a result of its analysis conducted after the introduction of SPXW options with Tuesday and Thursday expirations, which demonstrated no statistically significant impact on the bid-ask or effective spreads of SPXW options with Monday, Wednesday, and Friday expirations after trading in the SPXW options with Tuesday and Thursday expirations began. While SPXW options are P.M.-settled and SPX options are A.M.-settled, they are otherwise nearly identical products. P.M.-settled XSP options are nearly identical to P.M.-settled and A.M.-settled SPX options, as they are based on an index comprised of the same securities, just 1⁄10th the size. Similarly, P.M.-settled MRUT options are nearly identical to A.M.-settled RUT Options, as they are based on an index comprised of the same securities, just 1⁄10th the size. Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate from this data that it is unlikely the introduction of P.M.-settled XSP or MRUT options significantly impacted the market quality of A.M.-settled options, such as A.M.-settled SPX or RUT options, respectively, when the pilots began.

Additionally, the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, has significantly minimized risks of any potential impact of P.M.-, cash-settled XSP and MRUT options on the underlying cash markets. As such, the Exchange believes that permanent Pilot Products Pilot Programs do not raise any unique or prohibitive regulatory concerns and that such trading has not, and will not, adversely impact fair and orderly markets on Expiration Fridays for the underlying indexes or their component securities. Further, as the Exchange has not identified any significant impact on market quality or any unique or prohibitive regulatory concerns as a result of offering the Pilot Products, the Exchange believes that the continuation of the Pilot Products Pilot Programs as pilots, including the gathering, submission and review of the pilot reports and data, is no longer necessary and that making the Pilot Products Pilot Programs permanent will

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] *See supra* notes 24–37.

allow the Exchange to otherwise allocate time and resources to other industry initiatives.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options 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 does not believe that making the Pilot Products Pilot Programs permanent will impose any unnecessary or inappropriate burden on intramarket competition because the Pilot Products options will continue to be available to all market participants who wish to participate in the XSP and MRUT options markets. The Exchange believes that the growth that the markets for P.M.-settled products, including the Pilot Products, have experienced since their reintroduction through pilot programs indicates strong, continued investor interest and demand, warranting permanent Pilot Products Pilot Programs. The Exchange believes that, for the period that P.M.-settled XSP and MRUT options have been in operation as pilot programs, they have provided investors with desirable products with which to trade and wishes to permanently offer these products to investors. Furthermore, during the pilot period, the Exchange has not observed any significant adverse market effects nor identified any regulatory concerns as a result of the Pilot Products Pilot Programs, and, as such, the continuation of the programs as pilots, including the gathering, submission and review of the pilot reports and data, is no longer necessary—permanent Pilot Products Pilot Programs will allow the Exchange to otherwise allocate time and resources to other industry initiatives.

The Exchange further does not believe that making the Pilot Products Pilot Programs permanent will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies to classes of options listed only for trading on Cboe Options. The Exchange notes that other exchanges are free to and do offer competing products. To the extent that the permanent offering and continued trading of P.M.-settled XSP and MRUT options may make Cboe Options a more attractive marketplace to market participants at other exchanges, such market participants may elect to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2023–019 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–019. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–019, and should be submitted on or before May 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97367; File No. SR–CBOE–2023–005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent the Operation of the Program That Allows the Exchange to List P.M.-Settled Third Friday-of-the-Month S&P 500 Stock Index (''S&P 500'') Options (''SPX'') Series

April 24, 2023.

I. Introduction

On January 6, 2023, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its pilot program that permits the Exchange to list P.M.-settled third Friday-of-the-month SPX options (the ''Program''). The proposed rule change was published for comment in the **Federal**

[49] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on January 24, 2023.[3] On March 7, 2023, pursuant to section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 17, 2023, the Exchange submitted Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[6] The Commission has received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to make permanent a pilot program that permits the Exchange to list and trade cash-settled SPX options with third Friday-of-the-month expiration dates (''Expiration Friday'') whose exercise settlement value is derived from closing prices on the last trading day prior to expiration (''SPXPM'').

In February 2013, the Commission approved the Program on a pilot basis.[8] At the time, the Commission noted its concern about the potential impact on the market at expiration for the underlying component stocks for a P.M.-settled, cash-settled index option such as SPXPM.[9] However, the Commission also recognized the potential impact was unclear.[10] The Commission approved the Program on a pilot basis to allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects.[11] In order to facilitate this assessment, the Exchange committed to provide the Commission with data and analysis in connection with the Program.[12] Although the pilot period was originally scheduled to end on February 8, 2014, the Exchange filed to extend the operation of the pilot on multiple occasions, which, pursuant to current Rule 4.13.13,[13] is currently set to expire on the earlier of May 8, 2023 or the date on which the Program is approved on a permanent basis.[14]

Since the Program's inception in 2013, the Exchange has submitted reports to the Commission regarding the Program that detail the Exchange's experience with the Program, pursuant to the SPXPM Approval Order.[15] Specifically, the Exchange states it has submitted annual pilot reports to the Commission that contain an analysis of volume, open interest, and trading patterns.[16] The analysis examines trading in SPX options, as well as trading in the securities that comprise the S&P 500 Index. Additionally, for series that exceed certain minimum open interest parameters, the annual reports provide analysis of index price volatility and share trading activity. The Exchange has also submitted periodic interim reports that contain some, but not all, of the information contained in the annual reports (together with the annual reports, the ''pilot reports''). The Exchange states that, during the course of the Program, it has provided the Commission with any additional data or analyses the Commission requested if it deemed such data or analyses necessary to determine whether the Pilot Program was consistent with the Exchange Act.[17] The Exchange states it has made public on its website all data and analyses previously submitted to the Commission under the Program,[18] and will continue to make public any data and analyses it submits to the Commission while the Program is still in effect.[19]

As set forth more fully in the Notice, the Exchange concludes that the Program does not negatively impact market quality or raise any unique or prohibitive regulatory concerns.[20] The Exchange states it has not identified any evidence from the pilot data indicating that the trading of P.M.-settled SPX options has any adverse impact on fair and orderly markets on Expiration Fridays for the S&P 500 Index or the underlying securities comprising the S&P 500, nor have there been any observations of abnormal market movements attributable to P.M.-settled SPX options from any market participants that have come to the attention of the Exchange.[21] In order to support its overall assessment of the Program, the Exchange includes both an assessment of a study conducted at the direction of the staff of the Commission's Division of Economic and Risk Analysis and the Exchange's review and analysis of pilot data.[22] Among other things, the Notice includes the Exchange's analysis of end of day volatility as well as a comparison of the impact of quarterly index rebalancing versus P.M.-settled expirations.[23]

The Exchange also completed an analysis intended to evaluate whether

[3] *See* Securities Exchange Act Release No. 96703 (January 18, 2023), 88 FR 4265 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 97063, 88 FR 15476 (March 13, 2023). The Commission designated April 24, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange submitted Exhibit 3, which provides additional detail regarding the Exchange's analysis of the market quality impact of P.M.-settled index options. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboe-2023-005/srcboe2023005.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120) (the ''SPXPM Approval Order''). Pursuant to Securities Exchange Act Release No. 80060 (February 17, 2017), 82 FR 11673 (February 24, 2017) (SR–CBOE–2016–091), the Exchange moved third-Friday P.M.-settled options into the S&P 500 Index options class, and as a result, the trading symbol for P.M.-settled S&P 500 Index options that have standard third Friday-of-the-month expirations changed from ''SPXPM'' to ''SPXW.'' This change went into effect on May 1, 2017, pursuant to Cboe Options Regulatory Circular RG17–054.

[9] *See* SPXPM Approval Order, 78 FR at 10669. *See also* Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801–02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options on the C2 Options Exchange, Incorporated); and 65256 (September 2, 2011), 76 FR 55969, 55970–76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

[10] *See* SPXPM Approval Order, 78 FR at 10669.

[11] *See* SPXPM Approval Order, 78 FR at 10669.

[12] *See* SPXPM Approval Order, 78 FR at 10670.

[13] In 2019, the Exchange relocated prior Rule 24.9, containing the provision which governs the Pilot Program, to current Rule 4.13. *See* SR–CBOE–2019–092 (October 4, 2019), which did not make any substantive changes to prior Rule 24.9 and merely relocated it to Rule 4.13.

[14] *See* Securities Exchange Act Release Nos. 71424 (January 28, 2014), 79 FR 6249 (February 3, 2014) (SR–CBOE–2014–004); 73338 (October 10, 2014), 79 FR 62502 (October 17, 2014) (SR–CBOE–2014–076); 77573 (April 8, 2016), 81 FR 22148 (April 14, 2016) (SR–CBOE–2016–036); 80386 (April 6, 2017), 82 FR 17704 (April 12, 2017) (SR–CBOE–2017–025); 83166 (May 3, 2018), 83 FR 21324 (May 9, 2018) (SR–CBOE–2018–036); 84535 (November 5, 2018), 83 FR 56129 (November 9, 2018) (SR–CBOE–2018–069); 85688 (April 18, 2019), 84 FR 17214 (April 24, 2019) (SR–CBOE–2019–023); 87464 (November 5, 2019), 84 FR 61099 (November 12, 2019) (SR–CBOE–2019–107); 88674 (April 16, 2020), 85 FR 22479 (April 22, 2020) (SR–CBOE–2020–036); 90263 (October 23, 2020), 85 FR 68611 (October 29, 2020) (SR–CBOE–2020–100); 91698 (April 28, 2021) 86 FR 23761 (May 4, 2021) (SR–CBOE–2021–027); 93455 (October 28, 2021), 86 FR 60660 (November 3, 2021) (SR–CBOE–2021–062); 94799 (April 27, 2022), 87 FR 26244 (May 3, 2022) (SR–CBOE–2022–019); *and* 96222 (November 3, 2022), 87 FR 67736 (November 9, 2022) (SR–CBOE–2022–054).

[15] *See supra* note 8.

[16] *See* Notice, 88 FR at 4266.

[17] *See* Notice, 88 FR at 4267.

[18] Available at *https://www.cboe.com/aboutcboe/legal-regulatory/national-market-system-plans/pm-settlement-spxpm-data.*

[19] *See* Notice, 88 FR at 4267.

[20] *See* Notice, 88 FR at 4267–70.

[21] *See* Notice, 88 FR at 4267.

[22] *See* Notice, 88 FR at 4266–70.

[23] *See* Notice, 88 FR at 4268.

the Program impacted the quality of the SPX options market. Specifically, the Exchange compared values of key market quality indicators (specifically, the bid-ask spread [24] and effective spread [25]) in SPXW options both before and after the introduction of Tuesday expirations and Thursday expirations for SPXW options on April 18 and May 11, 2022, respectively.[26] The Exchange believes analyzing whether the introduction of new SPXW P.M.-settled expirations (*i.e.,* SPXW options with Tuesday and Thursday expirations) impacted the market quality of then-existing SPXW P.M.-settled expirations (*i.e.,* SPXW options with Monday, Wednesday, and Friday expirations) provides a reasonable substitute to evaluate whether the introduction of P.M.-settled index options impacted the market quality of the SPX market when the Program began.[27] Therefore, the Exchange believes analyzing the impact of new SPXW options on then-existing SPXW options permit the Exchange to extrapolate that it is unlikely the introduction of P.M.-settled SPXW options significantly impacted the market quality of A.M.-settled SPX options when the Program began.[28] The full analysis is included in Exhibit 3.[29]

Finally, the Exchange states that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, have significantly minimized risks of any potential impact of P.M.-, cash-settled SPX options on the underlying cash markets.[30]

[24] The Exchange calculated for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) the daily time-weighted bid-ask spread on the Exchange during its regular trading hours session, adjusted for the difference in size between SPXW options and SPY options (SPXW options are approximately ten times the value of SPY options).

[25] The Exchange calculated the volume-weighted average daily effective spread for simple trades for each of SPXW options (with Monday, Wednesday, and Friday expirations) and SPY Weekly options (with Monday, Wednesday, and Friday expirations) as twice the amount of the absolute value of the difference between an order execution price and the midpoint of the national best bid and offer at the time of execution, adjusted for the difference in size between SPXW options and SPY options.

[26] For purposes of comparison, the Exchange paired SPXW options and SPY options with the same moneyness and same days to expiration.

[27] *See* Notice, 88 FR at 4269.

[28] *See* Notice, 88 FR at 4270.

[29] *See* Amendment No. 1, *supra* note 6.

[30] *See* Notice, 88 FR at 4269.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CBOE–2023–005, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act [31] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to make permanent a pilot program that permits the listing and trading of P.M.-settled SPX options with third Friday-of-the-month-expirations. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[33]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with sections 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[34] any request for an opportunity to make an oral presentation.[35]

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5).

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by May 19, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 2, 2023. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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–CBOE–2023–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2023–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[34] 17 CFR 240.19b–4.

[35] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (Jun. 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CBOE–2023–005 and should be submitted by May 19, 2023. Rebuttal comments should be submitted by June 2, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08986 Filed 4–27–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97353; File No. SR–NASDAQ–2023–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Establish Listing Standards Related to Recovery of Erroneously Awarded Executive Compensation

April 24, 2023.

On February 22, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish listing standards related to recovery of erroneously awarded executive compensation as required by Rule 10D–1 of the Act. The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 27, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 11, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2023–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08976 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97060 (March 7, 2023), 88 FR 15500. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nasdaq-2023-005/srnasdaq2023005.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97364; File No. SR–CboeBZX–2023–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Listing Rules To Require Companies Listed on the Exchange To Develop, Implement, and Disclose a Written Compensation Recovery Policy To Comply With Rule 10D–1 Under the Exchange Act and Make Other Related Changes

April 24, 2023.

On February 24, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule to adopt listing rules to require companies listed on the Exchange to develop, implement, and disclose a written compensation recovery policy to comply with Rule 10D–1 under the Exchange Act. On March 3, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 15, 2023.[3] The Commission has received no comments on the proposal, as modified by Amendment No. 1.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 29, 2023. The Commission is extending this 45-day time period.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97099 (March 9, 2023), 88 FR 16051.

[4] 15 U.S.C. 78s(b)(2).

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment No. 1. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates June 13, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1 (File No. SR–CboeBZX–2023–013).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08983 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97362; File No. SR–NYSEARCA–2023–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt New NYSE Arca Rule 5.3–E(p) To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

April 24, 2023.

On February 24, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 5.3–E(p) to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 27, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates June 11, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEARCA–2023–20).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08981 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97053 (March 7, 2023), 88 FR 15495.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97361; File No. SR–NYSEAMER–2023–14]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt New Section 811 of NYSE American Company Guide To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

April 24, 2023.

On February 22, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Section 811 of the NYSE American Company Guide to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 27, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates June 11, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEAMER–2023–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08980 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97054 (March 7, 2023), 88 FR 15466.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97354; File No. SR–NYSE–2023–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt New Section 303A.14 of the NYSE Listed Company Manual To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

April 24, 2023.

On February 22, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Section 303A.14 of the NYSE Listed Company Manual to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3]

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 27, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates June 11, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2023–12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08977 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97055 (March 7, 2023), 88 FR 15480. Comments received on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nyse-2023-12/srnyse202312.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97358; File No. SR–CFE–2023–002]

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change Regarding Reporting Requirements for Exchange of Contract for Related Position Transactions and Block Trades

April 24, 2023.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 14, 2023 Cboe Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on April 14, 2023.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to streamline the process to report an Exchange of Contract for Related Position (''ECRP'') transaction [3] or Block Trade [4] when both parties to the transaction are utilizing the same Authorized Reporter to report the transaction to the Exchange. The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading on CFE, CFE may list security futures for trading in the future. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE 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. CFE 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, Proposed Rule Change

1. Purpose

CFE Rule 414 (Exchange of Contract for Related Position) includes provisions that govern the execution of ECRP transactions in CFE products, and CFE Rule 415 (Block Trades) includes provisions that govern the execution of Block Trades in CFE products. Rule 414(i) and Rule 415(f) require each CFE Trading Privilege Holder (''TPH'') that desires to execute ECRP transactions and Block Trades in CFE products to designate at least one Authorized Reporter that is pre-authorized by a CFE Clearing Member to report ECRP

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] An ECRP transaction consists of a transaction in a Contract listed on CFE and a transaction in a related position that is negotiated off of CFE's trading facility and is then reported to CFE which meets the parameters for an ECRP transaction under CFE's rules. The related position must have a high degree of price correlation to the underlying of the Contract transaction so that the Contract transaction would serve as an appropriate hedge for the related position. In every ECRP transaction, one party is the buyer of (or the holder of the long market exposure associated with) the related position and the seller of the corresponding Contract and the other party is the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Contract.

[4] A Block Trade is a large transaction in a Contract listed on CFE that is negotiated off of CFE's trading facility and is then reported to CFE which meets the parameters for a Block Trade under CFE's rules.

transactions and Block Trades to the Exchange on behalf of the TPH.

Rule 414(l) and Rule 415(i) describe the process that Authorized Reporters must use to notify the Exchange of ECRP transactions and Block Trades. The current notification process includes three steps. First, the Authorized Reporter that is the initiator of a notification of an ECRP transaction or Block Trade enters information regarding the transaction into the CFE System. Second, the Authorized Reporter that is the initiator of the notification of the ECRP transaction or Block Trade provides a reference ID generated for the transaction by the CFE System to the Authorized Reporter for the contra side of the transaction. Third, the Authorized Reporter for the contra side of the ECRP transaction or Block Trade accepts the notification to the Exchange of the transaction as entered by the initiating Authorized Reporter and enters contra side information for the transaction.

As a result, an Authorized Reporter that is reporting an ECRP transaction or Block Trade to the Exchange on behalf of both parties to the transaction must go through these three steps in order to report the transaction to the Exchange. In practice, this means that the Authorized Reporter must enter information for one side of the transaction on one screen within a Block/ECRP reporting tool that is a component of the CFE System, receive an email with a reference ID for the transaction generated by the CFE System, and then use the reference ID to separately enter information for the other side of the transaction on another screen within the Block/ECRP reporting tool.

CFE is proposing to amend Rule 414(l) and Rule 415(i) to allow an Authorized Reporter that is reporting an ECRP transaction or Block Trade to the Exchange on behalf of both parties to the transaction to report the transaction in one step. In practice, this would mean that the Authorized Reporter may enter at one time all of the required information for both sides of the transaction on one screen within the Block/ECRP reporting tool. The Authorized Reporter would no longer need to receive an email with a reference ID for the transaction or to go to another screen within the Block/ECRP reporting tool to enter the information for the contra side of the transaction. The proposed rule change does not change the information that is required to be reported to the Exchange relating to ECRP transactions and Block Trades.

The proposed rule change revises Rule 414 and Rule 415 in the following manner in order to allow an Authorized Reporter that is reporting an ECRP transaction or Block Trade to the Exchange on behalf of both parties to the transaction to do so in one step.

The proposed rule change proposes to split both Rule 414(l) and Rule 415(i) into two primary subsections. The first subsection in both proposed new Rule 414(l)(i) and proposed new Rule 415(i)(i) describes the current reporting process that would continue to apply when the parties to an ECRP transaction or Block Trade are using different Authorized Reporters to report the transaction to the Exchange. The second subsection in both proposed new Rule 414(l)(ii) and proposed new Rule 415(i)(ii) provides that if the parties to an ECRP transaction or Block Trade are each utilizing the same Authorized Reporter to notify the Exchange of the terms of the transaction, the Authorized Reporter is able to enter all of the required information regarding both sides of the transaction into the CFE System and to fully report the transaction to the Exchange.

Similarly, the proposed rule change proposes to revise Rule 414(m) and Rule 415(j) to provide for two alternative ways in which an ECRP transaction or Block Trade would be deemed to have been fully reported to the Exchange for timing purposes in connection with measuring adherence to permissible reporting period and reporting deadline provisions within Rule 414 and Rule 415. Proposed New Rule 414(m)(i) and proposed new Rule 415(j)(i) retain the current provision that an ECRP transaction or Block Trade shall be deemed to have been fully reported to the Exchange when the full report of the transaction has been received by the CFE System matching engine following notification to the CFE System of required information relating to the transaction by the initiating Authorized Reporter and acceptance and notification to the CFE System of required information relating to the transaction by the contra side Authorized Reporter. Proposed new Rule 414(m)(ii) and proposed new Rule 415(j)(ii) provide that an ECRP transaction or Block Trade shall be deemed to have been fully reported to the Exchange when the full report of the transaction has been received by the CFE System matching engine following notification to the CFE System of required information relating to the transaction by a single Authorized Reporter for both parties to the transaction.

The proposed rule change also includes some non-substantive proposed wording and organizational changes to Rule 414(l), Rule 414(m), Rule 415(i), and Rule 415(j). For example, the Exchange proposes to include revised lead-in language in Rule 414(l) and Rule 415(i) indicating that the CFE System includes a mechanism, in a form and manner provided by the Exchange, for Authorized Reporters to enter required information regarding an ECRP transaction or Block Trade, as applicable. As proposed to be revised, Rules 414(l) and Rule 415(i) then include in separate subsections, as further described above, the reporting provisions relating to the scenario in which both parties to an ECRP transaction or Block Trade, as applicable, are utilizing the same Authorized Reporter and the reporting provisions relating to the scenario in which the parties to an ECRP transaction or Block Trade are not utilizing the same Authorized Reporter. As another example, the Exchange proposes to change the organization of Rule 414(l) and Rule 415(i) by breaking out the provisions into additional subparagraphs with new numbering and lettering for those subparagraphs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of sections 6(b)(1)[6] and 6(b)(5)[7] in particular, in that it is designed:

- to contribute to the ability of the Exchange to enforce compliance by its TPHs and persons associated with its TPHs with the provisions of the rules of the Exchange,
- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,
- to remove impediments to and perfect the mechanism of a free and open market and a national market system,
- and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change contributes to the Exchange's ability to enforce compliance by its TPHs and persons associated with its TPHs with the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(5).

provisions of the rules of the Exchange and to carry out the Exchange's responsibilities as a self-regulatory organization in that the proposed rule change facilitates the collection of trade information that the Exchange may utilize in reviewing whether ECRP transactions and Block Trades comply with Exchange rules.

Additionally, the proposed rule change proposes to make clear to TPHs the reporting process for the submission of required information regarding an ECRP transaction or Block Trade when an Authorized Reporter is reporting the transaction to the Exchange on behalf of both parties to the transaction by describing that process in CFE's rules. The proposed rule change also contributes to facilitating compliance with CFE rules by making it easier for Authorized Reporters to provide information to the Exchange regarding ECRP transactions and Block Trades when an Authorized Reporter is reporting both sides of the transaction. Similarly, the proposed rule change improves the functioning of the reporting mechanism for ECRP transactions and Block Trades and thus CFE's market by making the process to report these types of transactions more efficient where the Authorized Reporter is reporting both sides of the transaction. The proposed rule change does not substantively change the existing reporting requirements for ECRP transactions or Block Trades and instead serves to simplify the reporting process in the scenario in which both parties to an ECRP transaction or Block Trade, as applicable, are utilizing the same Authorized Reporter.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden intra-market competition because the proposed rule amendments will apply equally to all TPHs. The Exchange also believes that the proposed rule change will not burden inter-market competition because the proposed rule change contributes to the Exchange's ability to enforce compliance with its rules and to carry out its responsibilities as a self-regulatory organization by contributing to the Exchange's ability to obtain trade information that it may utilize in reviewing whether ECRP transactions and Block Trades comply with Rule 414 and 415.

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 proposed rule change will become operative on April 28, 2023. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[8]

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–CFE–2023–002 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CFE–2023–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CFE–2023–002, and should be submitted on or before May 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08978 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, May 3, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt rule amendments that modernize and improve disclosure about repurchases of an issuer's equity securities that are registered under the Securities Exchange Act of 1934, including requiring issuers to present the disclosure using a structured data language.

2. The Commission will consider whether to adopt amendments to Form PF, the confidential reporting form for certain registered investment advisers to private funds, to require current reporting for certain private fund advisers, and revise certain other reporting requirements.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: April 26, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–09162 Filed 4–26–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97363; File No. SR–NYSECHX–2023–09]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Adopt New NYSE Chicago Rule 29 To Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation

April 24, 2023.

On February 22, 2023, NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 29 to require issuers to develop and implement a policy providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. The proposed rule change was published for comment in the **Federal Register** on March 13, 2023.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 27, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates June 11, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSECHX–2023–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08982 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97052 (March 7, 2023), 88 FR 15476.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34893; File No. 812–15364]

Silver Point Specialty Lending Fund, et al.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: SILVER POINT SPECIALTY LENDING FUND; SILVER POINT SPECIALTY CREDIT FUND MANAGEMENT, LLC; SILVER POINT CAPITAL FUND, L.P.; SILVER POINT CAPITAL OFFSHORE FUND, LTD.; SILVER POINT CAPITAL OFFSHORE MASTER FUND, L.P.; SILVER POINT CAPITAL, L.P.; SILVER POINT DISTRESSED OPPORTUNITIES FUND, L.P.; SILVER POINT DISTRESSED OPPORTUNITIES OFFSHORE MASTER FUND, L.P.; SILVER POINT DISTRESSED OPPORTUNITIES OFFSHORE FUND, L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS (OFFSHORE), L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS, L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS MASTER FUND (OFFSHORE), L.P.; SILVER POINT DISTRESSED OPPORTUNITIES MANAGEMENT, LLC; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS II (OFFSHORE), L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS II, L.P.; SP DISTRESSED OPPORTUNITY IP II INTERMEDIATE, L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS II MASTER FUND (OFFSHORE), L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS II MASTER FUND, L.P.; SILVER POINT DISTRESSED OPPORTUNITY INSTITUTIONAL PARTNERS II MANAGEMENT, LLC; SILVER POINT SELECT OPPORTUNITIES FUND A, L.P.; SILVER POINT SPECIALTY CREDIT FUND II, L.P.; SILVER POINT SPECIALTY CREDIT FUND II (OFFSHORE), L.P.; SILVER POINT SPECIALTY CREDIT FUND II (OFFSHORE) B, L.P.; SILVER POINT SPECIALTY CREDIT FUND II (OFFSHORE) C, L.P.; SILVER POINT SPECIALTY CREDIT FUND II MINI–MASTER FUND (OFFSHORE), L.P.; SILVER POINT SPECIALTY CREDIT FUND II MINI–MASTER FUND, L.P.; SILVER POINT SPECIALTY CREDIT FUND II MANAGEMENT, LLC; SILVER POINT SPECIALTY CREDIT SILVER STAR FUND, L.P.; SILVER POINT SPECIALTY CREDIT SILVER STAR FUND MANAGEMENT, LLC; SILVER POINT LOAN FUNDING, LLC; SILVER POINT LOAN FUNDING MANAGEMENT, LLC; SILVER POINT SPECIALTY CREDIT FUND III (OFFSHORE), L.P.; SILVER POINT SPECIALTY CREDIT FUND III MANAGEMENT, LLC; SILVER POINT SPECIALTY CREDIT FUND III, L.P.; SILVER POINT SPECIALTY CREDIT III MASTER FUND (OFFSHORE), L.P.; SILVER POINT SPECIALTY CREDIT III MASTER FUND, L.P.; SILVER POINT RR MANAGER, L.P.; SILVER POINT CLO 1, LTD.; SILVER POINT CLO 2, LTD.

FILING DATES: The application was filed on July 1, 2022, and amended on October 25, 2022 and March 10, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on May 19, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Michael Hoffman, Skadden, Arps, Slate, Meagher & Flom LLP, at *Michael.Hoffman@skadden.com.*

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated March 10, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: April 24, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08993 Filed 4–27–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17891 and #17892; Oklahoma Disaster Number OK–00168]

Presidential Declaration of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4706–DR), dated 04/24/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 04/19/2023 through 04/20/2023.

DATES: Issued on 04/24/2023.

Physical Loan Application Deadline Date: 06/23/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/24/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): McClain, Pottawatomie.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Canadian, Cleveland, Garvin, Grady, Lincoln, Okfuskee, Oklahoma, Pontotoc, Seminole.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17891 C and for economic injury is 17892 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–09016 Filed 4–27–23; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1316X]

GNP RLY, Inc.—Abandonment Exemption—in King County, Wash.

GNP RLY, Inc. (GNP), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon an approximately 2.58-mile segment of a freight rail easement between milepost 23.8 and milepost 26.38, along with a spur that extends into Bothell, Wash., all in Woodinville, King County, Wash. (the Line). The Line traverses U.S. Postal Service Zip Code 98072.

GNP has certified that: (1) no local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line, as the Line is stub-ended at its southern terminus; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court, or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C.

91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on May 28, 2023, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues must be filed by May 8, 2023.[2] Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 8, 2023.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 18, 2023.

All pleadings, referring to Docket No. AB 1316X, 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 GNP's representative, James H.M. Savage, 22 Rockingham Court, Germantown, MD 20874.

If the verified notice contains false or misleading information, the exemption is void ab initio.

GNP has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by April 25, 2023. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GNP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by GNP's filing of a notice of consummation by May 28, 2024, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: April 25, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2023–09076 Filed 4–27–23; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Commercial Space Transportation Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee meeting.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee.

DATES: The meeting will take place on May 15, 2023 from 10:00 p.m. to 4:00 p.m.

ADDRESSES: Instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at (202) 267–4156, or by emal at *james.a.hatt@faa.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Commercial Space Transportation Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

- Welcome Remarks
  - COMSTAC Chair
  - FAA Administrator
  - Associate Administrator for AST
- AST Update to COMSTAC
  - Licensing Updates
  - LOX/Methane Testing
  - Introduction to Common Standards Working Group (CSWG)
  - Update on Part 440 SpARC
  - National Spaceport Strategy
- Guest Speakers
  - ASTM F47 Standards Development Organization Update
  - USSF Update on NSSL Phase 3 and Range of the Future Plans
- COMSTAC Reports
- Public Comment Period
- Closing Comments
- Adjournment

III. Public Participation

The meeting listed in this notice will be open to the public, virtually. Please see the website no later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) by May 12, 2023 so that the information can be made available to COMSTAC members for their review and consideration before the meeting. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email. Portable Document Format (PDF) attachments are preferred for email submissions. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

Issued in Washington, DC.

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2023–09015 Filed 4–27–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Commercial Space Transportation Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a meeting of the Commercial Space Transportation Advisory Committee.

DATES: The meeting will take place on May 15, 2023 from 10:00 p.m. to 4:00 p.m.

ADDRESSES: Instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: James Hatt, Designated Federal Officer, U.S. Department of Transportation, at (202) 267–4156, or by email at *james.a.hatt@faa.gov.* Any committee related request should be sent to the person listed in this section.

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Welcome Remarks
- COMSTAC Chair
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AST Update to COMSTAC
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- LOX/Methane Testing
- Introduction to Common Standards Working Group (CSWG)
- Update on Part 440 SpARC
- National Spaceport Strategy

Guest Speakers
- ASTM F47 Standards Development Organization Update
- USSF Update on NSSL Phase 3 and Range of the Future Plans

COMSTAC Reports

Public Comment Period

Closing Comments

Adjournment

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The meeting listed in this notice will be open to the public, virtually. Please see the website no later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) by May 12, 2023 so that the information can be made available to COMSTAC members for their review and consideration before the meeting. Written statements should be supplied in the following formats: One hard copy with original signature and/or one electronic copy via email. Portable Document Format (PDF) attachments are preferred for email submissions. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

Issued in Washington, DC, April 25, 2023.

James A. Hatt,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2023–09011 Filed 4–27–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date.

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On April 24, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals:

1. AGHAMIRI, Seyyed Mohammad Amin (Arabic: سید محمد آقامیری) (a.k.a. AGHAMIRI, Seyed Mohammad Amin), Iran; DOB 21 Sep 1986; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport E54650560 (Iran) expires 23 Sep 2026; National ID No. 0081673205 (Iran); Secretary of Iran's Supreme Council of Cyberspace (individual) [IRAN-TRA] [IRAN-EO13846] (Linked To: SUPREME COUNCIL OF CYBERSPACE).

   Designated pursuant to 7(vii) of Executive Order 13846 of August 6, 2018, "Reimposing Certain Sanctions With Respect to Iran" (E.O. 13846), 83 FR 38939, 3 CFR, 2018 Comp., p. 854, for having acted or purported to act for or on behalf of, directly or indirectly, the SUPREME COUNCIL OF CYBERSPACE, a person whose property and interests in property are blocked pursuant to E.O. 13846.

2. ABSALAN, Parviz (Arabic: پرویز آبسالان), Zahedan, Iran; DOB 11 Aug 1964; POB Zabol, Sistan and Baluchistan Province; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 3670287000; Birth Certificate Number 01764 (Iran); Deputy Commander of IRGC Salman Corps of Sistan and Baluchistan Province (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

   Designated pursuant to 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

3. ADINEHVAND, Salman (Arabic: سلمان آدینه وند) (a.k.a. ADINEH VAND, Salman (Arabic: سلمان آدینه وند); a.k.a. ADINEH-VAND, Salman), Tehran, Iran; DOB 10 May 1980; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Commander of the LEF Tehran Police Relief Unit (individual) [IRAN-HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

   Designated pursuant to 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13553.

4. GOSHTASBI, Amanollah (Arabic: امان الله گشتاسبی) (a.k.a. GARSHASBI, Amanollah; a.k.a. GOSHTASBI, Amanolah (Arabic: امان الله گشتاسبی); a.k.a. GOSHTASBI, Amanulah; a.k.a. GOSHTASBI, Amanullah), Iran; DOB 21 Mar 1965 to 20 Mar 1966; POB Gachsaran, Kohgiluyeh and Boyer-Ahmed Province, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Deputy Inspector

of the IRGC Ground Forces (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

5. SEYEDOSHOHADA, Ahmad Khadem (Arabic: احمد خادم سیدالشهدا) (a.k.a. DANESH PAZHU, Ahmad Khadem (Arabic: ا□مد خادم دانش پژو); a.k.a. KADEM, Ahmad; a.k.a. KHADEM, Ahmad; a.k.a. SAYYEDOSHOHADA, Ahmad Khadem; a.k.a. SEYED AL-SHOHADA, Ahmad Khadem), Khuzestan, Iran; Lorestan, Iran; Kohgiluyeh and Boyer-Ahmad, Iran; DOB 27 Apr 1959; POB Shushtar, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 1881506428 (Iran); Commander of Karbala IRGC Operational Base (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

Dated: April 24, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–08966 Filed 4–27–23; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 88 No. 82 Friday, April 28, 2023

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2021–0836; FRL–6399–02–OAR]

RIN 2060–AT78

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action lists certain substances as acceptable, subject to use conditions, in the refrigeration and air conditioning sector for chillers—comfort cooling, residential dehumidifiers, residential and light commercial air conditioning and heat pumps, and a substance as acceptable, subject to use conditions and narrowed use limits, in very low temperature refrigeration. Through this action, EPA is incorporating by reference standards which establish requirements for electrical air conditioners, heat pumps, and dehumidifiers, laboratory equipment containing refrigerant, safe use of flammable refrigerants, and safe design, construction, installation, and operation of refrigeration systems. Finally, this action lists certain substances as acceptable, subject to use conditions, in the fire suppression sector for certain streaming and total flooding uses.

DATES: This rule is effective May 30, 2023. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of May 30, 2023. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register as of May 11, 2015 and September 7, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2021–0836. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20460. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). For further information on EPA Docket Center services and the current status, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Holly Tapani, Stratospheric Protection Division, Office of Atmospheric Protection (Mail Code 6205A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0679; email address: *tapani.holly@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy program are available on EPA's SNAP website at *https://www.epa.gov/snap/snap-regulations.*

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I. General information

A. Executive Summary and Background

This action finalizes listings of new alternatives for the refrigeration and air conditioning (AC) and fire suppression sectors. Specifically, EPA is:

- Listing hydrofluoroolefin (HFO)-1234yf, hydrofluorocarbon (HFC)-32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in chillers used in comfort cooling, including commercial AC and industrial process AC (IPAC);
- Listing HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in residential dehumidifiers;
- Listing HFC–32 as acceptable, subject to use conditions, for use in self-contained room ACs and heat pumps (HPs);
- Listing R–1150 as acceptable, subject to use conditions and narrowed use limits, for use in very low temperature refrigeration (VLTR);
- Listing 2-bromo-3,3,3-trifluoropropene (2–BTP) as acceptable, subject to use conditions, in streaming—for non-residential use, except home offices and boats—and total flooding—in normally unoccupied spaces under 500 ft^3;
- Listing EXXFIRE® as acceptable, subject to use conditions, in total flooding—for normally unoccupied areas; and
- Listing Powdered Aerosol H, also known as Pyroquench-α™, as acceptable, subject to use conditions, in total flooding—for normally unoccupied areas.

EPA is finalizing these new listings after its evaluation of human health and environmental information for these substitutes in the refrigeration and AC sector and the fire suppression sector under the Significant New Alternatives Policy (SNAP) program based on the information that EPA has included in the docket. This action provides additional flexibility for industry by providing new options in specific uses.

SNAP Program Background

The SNAP program implements section 612 of the Clean Air Act (CAA). Several major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon (CFC), halon, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbon, and chlorobromomethane) or class II (hydrochlorofluorocarbon (HCFC)) ozone depleting substance (ODS) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes that it finds to be unacceptable for specific uses and to publish a corresponding list of acceptable substitutes for specific uses.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c).

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before a new or existing chemical is introduced into interstate commerce for significant new use as a substitute for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

The regulations for the SNAP program are promulgated at 40 Code of Federal Regulations (CFR) part 82, subpart G, and the Agency's process for reviewing SNAP submissions is described in regulations at 40 CFR 82.180. Under these rules, the Agency has identified five types of listing decisions: acceptable; acceptable, subject to use conditions; acceptable, subject to narrowed use limits; unacceptable; and pending (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered "use restrictions," as described below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses in the sector. After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met, to minimize risks to human health and the environment. EPA describes such substitutes as "acceptable, subject to use conditions" (40 CFR 82.180(b)(2)). For some substitutes, the Agency may

permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as "acceptable, subject to narrowed use limits." Under the narrowed use limit, users intending to adopt these substitutes "must ascertain that other alternatives are not technically feasible." (40 CFR 82.180(b)(3)).

In making decisions regarding whether a substitute is acceptable or unacceptable, and whether substitutes present risks that are lower than or comparable to risks from other substitutes that are currently or potentially available in the end-uses under consideration, EPA examines the criteria in 40 CFR 82.180(a)(7)(i) through (vii):

"(i) Atmospheric effects and related health and environmental impacts; (ii) General population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) Ecosystem risks; (iv) Occupational risks; (v) Consumer risks; (vi) Flammability; and (vii) Cost and availability of the substitute.".

Many SNAP listings include "comments" or "further information" to provide additional information on substitutes. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The "further information" classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the "Further Information" column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus, many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

For additional information on the SNAP program, visit the SNAP website at *https://www.epa.gov/snap.* The full lists of acceptable substitutes for ODS in all industrial sectors are available at *https://www.epa.gov/snap/snap-substitutes-sector.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate **Federal Register** citations can be found at: *https://www.epa.gov/snap/snap-regulations.* Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

B. Does this action apply to me?

The following list identifies regulated entities that may be affected by this rule and their respective North American Industrial Classification System (NAICS) codes:

- Plumbing, Heating, and Air Conditioning Contractors (NAICS 238220)
- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Pharmaceutical Preparations (*e.g.,* Capsules, Liniments, Ointments, Tablets) Manufacturing (NAICS 325412)
- Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS 333415)
- Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers (NAICS 423620)
- Refrigeration Equipment and Supplies Merchant Wholesalers (NAICS 423740)
- Recyclable Material Merchant Wholesalers (NAICS 423930)
- Appliance Repair and Maintenance (NAICS 811412)
- Fire Protection (NAICS 922160)

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, or organization could be affected by this action, you should carefully examine the regulations at 40 CFR part 82, subpart G and the revisions below. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in the preamble of this document:

2–BTP—2-bromo-3,3,3-trifluoropropene
AC—Air Conditioning or Air Conditioner
ACGIH—American Conference of Governmental Industrial Hygienists
AEL—Acceptable Exposure Limit
AHAM—Association of Home Appliance Manufacturers
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
AIHA—American Industrial Hygiene Association AIM Act—American Innovation and Manufacturing Act of 2020
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASTM—American Society for Testing and Materials
CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
CRA—Congressional Review Act
CO_2—Carbon Dioxide
EEAP—Environmental Effects Assessment Panel
EIA—Environmental Investigation Agency
EPA—United States Environmental Protection Agency
FR—Federal Register
GWP—Global Warming Potential
HCFC—Hydrochlorofluorocarbon
HCFO—Hydrochlorofluoroolefin
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HP—Heat Pump
ICF—ICF International, Inc.
IEC—International Electrotechnical Commission
IPAC—Industrial Process Air Conditioning
IPCC—Intergovernmental Panel on Climate Change
LFL—Lower Flammability Limit
LOAEL—Lowest Observed Adverse Effect Level
MIAQ—Madison Indoor Air Quality
MVAC—Motor Vehicle Air Conditioning
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industrial Classification System
NARA—National Archives and Records Administration
NFPA—National Fire Protection Association
NIOSH—National Institute for Occupational Safety and Health
NPRM—Notice of Proposed Rulemaking
NRTL—Nationally Recognized Testing Laboratories
ODP—Ozone Depletion Potential
ODS—Ozone Depleting Substances
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PFAS—Per- and poly-fluoroalkyl substances
PFCs—Perfluorocarbons
PMS—Pantone® Matching System
ppm—Parts Per Million
PRA—Paperwork Reduction Act
PTAC—Packaged Terminal Air Conditioner
PTHP—Packaged Terminal Heat Pump
RAL—"Reichs-Ausschuß für Lieferbedingungen und Gütesicherung,"

Germany's National Commission for Delivery Terms and Quality Assurance
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
SCBA—Self-Contained Breathing Apparatus
SDS—Safety Data Sheet
SIP—State Implementation Plan
SNAP—Significant New Alternatives Policy
TFA—trifluoroacetic acid
TLV–TWA—Threshold Limit Value-Time-Weighted Average
TSCA—Toxic Substances Control Act
TWA—Time Weighted Average
UL—UL, formerly known as Underwriters Laboratories, Inc.
UMRA—Unfunded Mandates Reform Act
VOC—Volatile Organic Compound, Volatile Organic Compounds
VLTR—Very Low Temperature Refrigeration
WCFF—Worst Case of Fractionation for Flammability
WCF—Worst Case of Formulation for Flammability
WEEL—Workplace Environmental Exposure Limit
WMO—World Meteorological Organization

II. What is EPA finalizing in this action?

This section of the preamble describes EPA's final listings for certain refrigerants and fire suppressants in specific end-uses, including final use restrictions. In addition, this section provides responses to comments EPA received on the proposed listings during the public comment period for the proposed rule. One comment was received after the close of the comment period, to which no response from the Agency is required. The regulatory text for new listings is codified in appendix X of 40 CFR part 82, subpart G. The regulatory text for a revised listing is codified in appendix R of 40 CFR part 82, subpart G. The final regulatory text contains listing decisions for the end-uses discussed throughout this section below.

A. Chillers—Listing of HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as Acceptable, Subject to Use Conditions, for Use in New Chiller Equipment Used in Comfort Cooling, Including Both Commercial AC and Industrial Process Air Conditioning (IPAC)

EPA previously listed HFO–1234yf as acceptable, subject to use conditions, in motor vehicle AC, in light-duty vehicles (74 FR 53445; October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778; December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276; May 4, 2022). EPA previously listed HFC–32 as acceptable, subject to use conditions, as a substitute in residential and light commercial AC and HPs (80 FR 19454; April 10, 2015) (86 FR 24444; May 6, 2021) and previously listed R–452B, R–454A, R–454B, and R–454C, (hereafter called ''the four refrigerant blends''), as acceptable, subject to use conditions, as substitutes in residential and light commercial AC and HPs (86 FR 24444; May 6, 2021).[1]

This final rulemaking finds HFC–32, HFO–1234yf, and the four refrigerant blends acceptable, subject to use conditions, as substitutes in chillers. The SNAP program divides chillers for comfort cooling into two general types based on the type of compressor used in the system, *i.e.,* centrifugal and positive displacement compressors (including reciprocating, screw, scroll and rotary) chillers. EPA proposed to list HFO–1234yf, R–454A, R–454B, and R–454C as acceptable in all new chillers for comfort cooling and proposed to list HFC–32 and R–452B as acceptable only in new scroll and rotary chillers for comfort cooling. After consideration and evaluation of the comments received by the Agency in response to the July 28, 2022, notice of proposed rulemaking (87 FR 45508; hereafter, ''NPRM''), EPA is finalizing the listings for HFO–1234yf, R–454A, R–454B, and R–454C in chillers for comfort cooling as proposed. After consideration and evaluation of the comments received, EPA is broadening the listings for HFC–32 and R–452B relative to the NPRM, and is listing these alternatives as acceptable with use conditions across all chiller types for all comfort cooling applications, including but not limited to use in commercial AC and IPAC.

Several use conditions finalized for chillers are identical to those finalized for other end-uses (residential dehumidifiers and residential and light commercial AC and HPs) finalized in sections II.B and II.D. below. Because of this similarity, EPA discusses the use conditions that would apply to all three end-uses in detail in section II.E below. For chillers, EPA is also finalizing an additional use condition related to adherence to the ASHRAE 15–2019 standard. In summary, the use conditions for chillers are:

(1) New equipment only—These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—These refrigerants may be used only in chiller equipment that meet all requirements listed in the 3rd edition, dated November 1, 2019, of UL Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers.'' In cases where this final rule includes requirements different than those of the 3rd edition of UL Standard 60335–2–40, the appliance would need to meet the requirements of this final rule in place of the requirements in UL 60335–2–40, 3rd Edition. See section II.E below for further discussion on the requirements of this standard that EPA is incorporating by reference.

(3) Warning labels—Several warning labels are required as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by UL 60335–2–40, 3rd Edition. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent.

(4) Markings—Equipment must have distinguishing red (Pantone® Matching System (PMS) #185 or Reichs-Ausschuß für Lieferbedingungen und Gütesicherung[2] (RAL) 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The chiller equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25 mm) from the servicing port and shall be replaced if removed.

(5) For chillers, EPA is also finalizing a use condition related to adherence to the ASHRAE 15–2019 standard in addition to those common finalized use conditions for chillers, residential dehumidifiers, and self-contained room ACs. Specifically, EPA is requiring that these refrigerants may only be used in chillers that meet all requirements listed in the American National Standards Institute (ANSI)/ASHRAE Standard 15–2019 (hereafter ''ASHRAE 15–2019''). In cases where this final rule includes requirements different than those of ASHRAE 15–2019,[3] EPA is finalizing that the chiller appliance needs to meet the requirements of this final rule in place of the requirements in the ASHRAE Standard. This additional use

[1] In this final rule, we use the term ''air conditioner'' and ''AC'' to cover equipment that cools air, heats air, or has the function to do both (typically referred to as a ''heat pump''). While such equipment might humidify or dehumidify the air, the term does not include equipment whose purpose is for latent cooling only (*i.e.,* dehumidifiers), which are a separate end-use under SNAP and are addressed in section II.B of this final rule.

[2] Germany's National Commission for Delivery Terms and Quality Assurance.

[3] ASHRAE, 2019b. American National Standards Institute (ANSI)/American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 15. Safety Standard for Refrigeration Systems. 2019.

condition is discussed further in section II.A.4, below.

EPA notes that there may be other requirements pertaining to the manufacture, use, handling, and disposal of the listed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition [4] or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from chillers are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260–270).

1. Background on Chillers—Commercial AC and IPAC

This rulemaking applies to chillers that are covered by the UL 60335–2–40 standard ''Household and Similar Electrical Appliances—Safety—Part 2–40: Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' and ASHRAE Standard 15–2019, ''Safety Standard for Refrigeration Systems.'' EPA understands that UL 60335–2–40 covers chillers used for comfort cooling.

In the initial rule establishing the SNAP program (59 FR 13044; March 18, 1994), EPA included within the refrigeration and AC sector the end-use ''commercial comfort air conditioning'' and then elaborated on that end-use by saying that ''CFCs are used in several different types of mechanical commercial comfort AC systems, known as chillers.'' EPA indicated ''that over time, existing cooling capacity [from chillers] will be either retrofitted or replaced by systems using non-CFC refrigerants in a vapor compression cycle or by alternative technologies.'' EPA also explained in that rule that vapor compression chillers can be categorized by the type of compressor used, including centrifugal, rotary, screw, scroll and reciprocating compressors. These compressor types are also divided into centrifugal and positive displacement chillers, the latter of which includes those with reciprocating, screw, scroll or rotary compressors.

Centrifugal chillers are equipment that utilize a centrifugal compressor in a vapor-compression refrigeration cycle. Centrifugal chillers are typically used for commercial comfort AC, although other uses, that we are not addressing here, do exist. Centrifugal chillers can be found in office buildings, hotels, arenas, convention halls, airport terminals and other buildings. Centrifugal chillers tend to be used in larger buildings.

Positive displacement chillers are those that utilize positive displacement compressors such as reciprocating, screw, scroll or rotary types. Positive displacement chillers are applied in similar situations as centrifugal chillers, again primarily for commercial comfort AC, except that positive displacement chillers tend to be used for smaller capacity needs such as in mid- and low-rise buildings.

A chiller is a type of equipment using refrigerant that typically cools water or a brine solution, which is then pumped to fan coil units or other air handlers to cool the air that is supplied to the occupied spaces transferring the heat to the water. The heat absorbed by the water can then be used for heating purposes, and/or can be transferred directly to the air (''air-cooled''), to a cooling tower or body of water (''water-cooled''), or through evaporative coolers (''evaporative-cooled''). A chiller or a group of chillers could similarly be used for district cooling where the chiller plant cools water or another fluid that is then pumped to multiple locations being served such as several different buildings within the same complex. Chillers may also be used to maintain operating temperatures in various types of buildings, for example, in data centers, server farms, and agricultural/food operations. Chillers are used in other applications, for example, to cool process streams in industrial applications. Chillers are also used for comfort cooling of operators or climate control and protecting process equipment in industrial buildings, for example, in industrial processes when ambient temperatures could approach 200 °F (93 °C) and corrosive conditions could exist. The listing finalized today applies to all types of chillers in comfort cooling applications.

2. What are the ASHRAE classifications for refrigerant flammability?

The ANSI/ASHRAE Standard 34–2019 assigns a safety group classification for each refrigerant which consists of two to three alphanumeric characters (*e.g.,* A2L or B1). The initial capital letter indicates the toxicity, and the numeral denotes the flammability. ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than or equal to 400 parts per million (ppm) by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices.

The refrigerants are also assigned a flammability classification of 1, 2, 2L, or 3. Tests for flammability are conducted in accordance with American Society for Testing and Materials (ASTM) E681 using a spark ignition source at 140 °F (60 °C) and 14.7 psia (101.3 kPa).[5] The flammability classification ''1'' is given to refrigerants that, when tested, show no flame propagation. The flammability classification ''2'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 Btu/lb), and have a lower flammability limit (LFL) greater than 0.10 kg/m^3. The flammability classification ''2L'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 BTU/lb), have an LFL greater than 0.10 kg/m^3, and have a maximum burning velocity of 10 cm/s or lower when tested in dry air at 73.4 °F (23.0 °C) and 14.7 psi (101.3 kPa). The flammability classification ''3'' is given to refrigerants that, when tested, exhibit flame propagation and that either have a heat of combustion of 19,000 kJ/kg (8,169 BTU/lb) or greater or have an LFL of 0.10 kg/m^3 or lower.

For flammability classifications, refrigerant blends are designated based on the worst case of formulation for flammability and the worst case of fractionation for flammability determined for the blend.

[4] Under section 608(c)(2) of the CAA and EPA's regulations at 40 CFR 82.154(a)(1), it is unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any substitute substance for a class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. As provided in 40 CFR 82.154(a)(1), certain substitutes in certain end-uses have been exempted from this prohibition. References to the venting prohibition throughout this final rule refer to these provisions.

[5] ASHRAE, 2019a. ANSI/ASHRAE Standard 34–2019: Designation and Safety Classification of Refrigerants.

Figure 1. Refrigerant Safety Group Classification

Safety Group

Increasing Flammability ↑	Lower Toxicity	Higher Toxicity
Higher Flammability	A3	B3
Flammable	A2	B2
Lower Flammability	A2L	B2L
No Flame Propagation	A1	B1

Increasing Toxicity →

Using these safety group classifications, ANSI/ASHRAE Standard 34–2019 categorizes HFO–1234yf, HFC–32 and the four refrigerant blends in this section of this final rule in the A2L Safety Group.

3. What are HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C and how do they compare to other refrigerants in the same end-use?

HFO–1234yf and HFC–32 are lower flammability refrigerants, and the four refrigerant blends are lower flammability refrigerant blends, all with an ASHRAE safety classification of A2L. The respective Chemical Abstracts Service Registry Identification Numbers (CAS Reg. Nos.) of HFO–1234yf, HFC–32 and the components of the four refrigerant blends are listed below.

HFO–1234yf, also known by the trade names ''Solstice® yf'' and ''Opteon™ YF,'' is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1). HFC–32 is also known as R–32 or difluoromethane (CAS Reg. No. 75–10–5). R–452B, also known by the trade names ''Opteon™ XL 55'' and ''Solstice® L41y,'' is a blend consisting of 67 percent by weight HFC–32; seven percent HFC–125, also known as 1,1,1,2,2-pentafluoroethane (CAS Reg. No. 354–33–6); and 26 percent HFO–1234yf. R–454A, also known by the trade name ''Opteon™ XL 40,'' is a blend consisting of 35 percent HFC–32 and 65 percent HFO–1234yf. R–454B, also known by the trade names ''Opteon™ XL 41'' and ''Puron Advance™,'' is a blend consisting of 68.9 percent HFC–32 and 31.1 percent HFO–1234yf. R–454C, also known by the trade name ''Opteon™ XL 20,'' is a blend consisting of 21.5 percent HFC–32 and 78.5 percent HFO–1234yf.

Redacted submissions and supporting documentation for HFO–1234yf, HFC–32, and the four refrigerant blends are provided in the docket for this final rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of these substitutes. These assessments are available in the docket for this final rule.[6 7 8 9 10 11 12]

Environmental information: HFO–1234yf, HFC–32, and the four refrigerant blends have ODPs of zero.

HFO–1234yf has a 100-year integrated GWP of less than four.[13 14 15] HFC–32 has a GWP of 675. The four refrigerant blends are made up of the components HFC–32, HFC–125, and HFO–1234yf, which have GWPs of 675, 3,500, and less than four, respectively.[16] If these values are weighted by mass percentage, then R–452B, R–454A, R–454B, and R–454C have GWPs of about 700, 240, 470, and 150, respectively.

HFC–32, HFO–1234yf, and the other component of one of the four refrigerant blends, HFC–125, are excluded from EPA's regulatory definition of volatile organic compounds (VOC) (see 40 CFR 51.100(s)) for the purpose of addressing the development of State Implementation Plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS). The regulatory definition provides that ''any compound of carbon'' which ''participates in atmospheric

[6] ICF, 2022a. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–32.

[7] ICF, 2022b. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: HFO–123yf.

[8] ICF, 2022c. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–452B.

[9] ICF, 2022d. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454A.

[10] ICF, 2022e. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454B.

[11] ICF, 2022f. Risk Screen on Substitutes in Chillers and Industrial Process Air Conditioning (New Equipment); Substitute: R–454C.

[12] EPA notes that UL 60335–2–40 uses the Worst Case Formulation of Flammability (WCF) LFL, but that ASHRAE 34–2019 uses the Worst Case Fractionation of Flammability (WCFF) LFL for all of the blends except R–452B, in which case ASHRAE 34 references the WCF LFL. To be conservative, the Agency uses the WCFF LFL values for our flammability risk analysis. ASHRAE 34 plans to update their WCFF LFL values to WCF LFL values in future editions of the standard as a way to standardize LFLs going forward, after which the Agency may also consider switching to using WCF LFL values in the risk screens.

[13] The GWP in World Meteorological Organization (2018) is listed as less than 1. Burkholder *et al.* Appendix A, Table A–1 in *Scientific Assessment of Ozone Depletion: 2018, Global Ozone Research and Monitoring Project,* Report No. 58, World Meteorological Organization, Geneva, Switzerland, *http://ozone.unep.org/science/assessment/sap.* (WMO, 2018)

[14] Nielsen et al., 2007. Nielsen, O.J., Javadi, M.S., Sulbaek Andersen, M.P., Hurley, M.D., Wallington, T.J., Singh, R. 2007. Atmospheric chemistry of CF3CF=CH2: Kinetics and mechanisms of gas-phase reactions with Cl atoms, OH radicals, and O3. Chemical Physics Letters 439, 18–22. Available online at *http://www.lexissecuritiesmosaic.com/gateway/FedReg/network_OJN_174_CF3CF=CH2.pdf.*

[15] Hodnebrog Ø;. et al., 2013. Hodnebrog Ø;., Etminan, M., Fuglestvedt, J.S., Marston, G., Myhre, G., Nielsen, C.J., Shine, K.P., Wallington, T.J.: Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review, *Reviews of Geophysics, 51, 300–378, doi:10.1002/rog.20013,* 2013

[16] Unless otherwise specified, GWP values are 100-year values from Intergovernmental Panel on Climate Change (IPCC) (2007) Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.). Cambridge University Press. Cambridge, United Kingdom 996 pp.

photochemical reactions'' is considered a VOC unless expressly excluded based on a determination of ''negligible photochemical reactivity.'' Under section 608(c)(2) of the CAA and EPA's regulations at 40 CFR 82.154(a)(1), it is unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any substitute substance for a class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment.

Flammability information: HFO–1234yf, HFC–32 and the four refrigerant blends are all classified as 2L under ASHRAE Standards reflecting that these compounds are flammable but have lower burning velocity than compounds listed as 2 or 3 under the ASHRAE standard.

Toxicity and exposure data: HFO–1234yf, HFC–32 and the four refrigerant blends have an ASHRAE toxicity classification of A. Potential health effects of exposure to these substitutes include drowsiness or dizziness. The substitutes may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitutes may cause irregular heartbeat. The substitutes could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

The American Industrial Hygiene Association (AIHA) has established Workplace Environmental Exposure Limits (WEELs) of 1,000 ppm as an eight-hour time-weighted average (8-hr TWA) for HFC–32 and the component refrigerant HFC–125; the AIHA has established a WEEL of 500 ppm as an 8-hr TWA for HFO–1234yf. The manufacturer of R–452B, R–454A, R–454B, and R–454C recommends Acceptable Exposure Limits (AELs) for the workplace, respectively, of 874, 690, 854, and 615 ppm on an 8-hr TWA for these blends. EPA anticipates that users will be able to meet the AIHA WEELs and manufacturers' AELs and address potential health risks by following requirements and recommendations in the manufacturers' safety data sheet (SDS), the final use conditions (including adherence to ASHRAE Standard 15), and other safety precautions common to the refrigeration and AC industry.[17] [18] [19] [20] [21] [22]

Comparison to other substitutes in this end-use: HFO–1234yf, HFC–32, and the four refrigerant blends all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in these end-uses, such as HFO–1234ze(E) with an ODP of zero. Although HCFC–123 and R–406A (with components HCFC–22 and HCFC–142b) have been listed acceptable in this end-use with ODPs of 0.02 and 0.057, respectively, HCFC–123 (unless used, recovered, and recycled) may not be used as a refrigerant in equipment manufactured on or after January 1, 2020, under 40 CFR 82.15(g)(5)(i).[23] Similarly, components of R–406A (HCFC–22 and HCFC–142b) (unless used, recovered, and recycled) may not be used as a refrigerant for use in chillers manufactured on or after January 1, 2010, under 40 CFR 82.15(g)(2)(i).[24] Under 40 CFR 82.16, EPA has not issued any production and consumption allowances for HCFC–22 and HCFC–142b since 2019.

HFC–32 and the four refrigerant blends' GWPs, ranging from about 150 to 700, are higher than those of some of the acceptable substitutes for new centrifugal and positive displacement chillers, including HCFO–1233zd(E), HFO–1336mzz(Z), and R–515B, with GWPs of 3.7, 9, and 287, respectively. The GWPs of HFO–1234yf, R–454A, R–454B, and R–454C are lower than some of the acceptable substitutes for new centrifugal and positive displacement chillers, such as R–450A and R–513A, with GWPs of approximately 600 and 630, respectively. HFC–32's and R–452B's GWPs of 675 and about 700 are higher than the GWPs of those refrigerants. The GWPs of HFC–32 and R–452B are, however, lower than those of all the refrigerants that EPA listed as unacceptable for chillers as of January 1, 2024, in the final rule issued December 1, 2016, which had GWPs of 1,000 or higher. Further, HFC–32 and HFC–452B can be used in chillers that are designed to be used with refrigerants having higher pressure and higher volumetric capacity, unlike most of the other refrigerants listed acceptable in chillers (*e.g.,* HCFO–1233zd(E), R–450A, and R–513A). Volumetric capacity is important to achieve the cooling capacity needed without increasing equipment sizes, which could lead to weights exceeding code requirements, for instance, when a chiller on top of an existing building is replaced with a new one. Given the wide range of applications, not all refrigerants listed as acceptable under SNAP will be suitable for all equipment in the end-use. To provide additional options to ensure the availability of substitutes for the full range of chiller equipment for comfort cooling, EPA is finalizing the listings for HFC–32 and R–452B for all types of positive displacement chillers, as well as for centrifugal chillers and chillers for IPAC.

HFC–32's and the four refrigerant blends' GWPs, ranging from about 150 to 700, are higher than or comparable to those of some of the acceptable substitutes for new IPAC, including carbon dioxide (CO_2), HFO–1336mzz(Z) and R–515B with GWPs of 1, 9 and 287 respectively. Their GWPs are lower than some of the acceptable substitutes for new IPAC, such as HFC–134a, R–410A, and R–507A with GWPs of 1,430, 2,090 and 3,990 respectively. HFO–1234yf's GWP less than four is comparable to or lower than that of other acceptable substitutes for new IPAC, such as CO_2, HFO–1336mzz(Z) and R–515B with GWPs of 1, 9 and 287, respectively.

Information regarding the toxicity of other available alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/substitutes-chillers*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit, of HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFC–32, and the four refrigerant blends in chillers and IPAC are comparable to or lower than toxicity risks of other available substitutes in the same end-uses. Toxicity risks of the refrigerants can be minimized by use consistent with ASHRAE 15–2019—which applies under the use conditions—and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risks with HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced above. In conclusion, while these refrigerants may pose greater

[17] ICF, 2022a. Op. cit.

[18] ICF, 2022b. Op. cit.

[19] ICF, 2022c. Op. cit

[20] ICF, 2022d. Op. cit.

[21] ICF, 2022e. Op. cit.

[22] ICF, 2022e. Op. cit.

[23] The regulations at 40 CFR 82.15(g)(5)(iii) provide a limited exception to the prohibition on use in 82.15(g)(5)(i), for use of HCFC–123 as a refrigerant in equipment manufactured on or after January 1, 2020 but before January 1, 2021 if the conditions of 40 CFR 82.15(g)(5)(iii) are met.

[24] The regulations at 40 CFR 82.15(g)(2)(ii) provide limited exceptions to the prohibitions in 82.15(g)(2)(i), including for HCFC–22 ''for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before January 1, 2010, for use on a particular project.''

flammability risk than other available substitutes in the same end-uses, this risk can be minimized by use consistent with ASHRAE 15–2019—which applies for certain charge sizes under the use conditions—and other industry standards such as UL 60335–2–40—which also applies under the use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is finalizing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in this end-use.

4. Why is EPA finalizing these specific use conditions?

The UL Standard 60335–2–40 discussed in section II.E indicates that refrigerant charges greater than a specific amount (called ''m_3'' in the UL Standard and based on the refrigerant's LFL) are beyond its scope and that national standards apply, such as ASHRAE 15–2019. Given that depending on the charge size of the equipment, either UL 60335–2–40 or ASHRAE 15–2019 would apply, EPA is including adherence to both standards as use conditions for chillers.

EPA is finalizing that chillers using HFO–1234yf, HFC–32, or one of the four refrigerant blends must adhere to ASHRAE Standard 15–2019, with all addenda published by the date of the NPRM for this rule, including addenda a, b, c, d, e, f, i, j, k, m, n, o, q, and r. Where the requirements specified in this final rule and ASHRAE Standard 15 are different, the requirements of this final rule would apply.

A summary of relevant aspects of ASHRAE 15–2019 is provided here for information only. This is not meant to be a full explanation of the Standard or how it is applied. ASHRAE 15–2019 specifies requirements for refrigeration systems,[25] including chillers, based on the safety group classification of the refrigerant used, the type of occupancy in the location for which the system is used, and whether refrigerant-containing parts of the system enter the space or ductwork and so leakage in the space is deemed ''probable.'' ''High-Probability'' installations are those such that leaks or failures will result in refrigerant entering the occupied space. As explained above, HFO–1234yf, HFC–32 and the four refrigerant blends are all classified as A2L refrigerants. Occupancies are divided into six classifications: institutional, public assembly, residential, commercial, large mercantile, and industrial. Examples of these include jails, theaters, apartment buildings, office buildings, shopping malls, and chemical plants, respectively.

Sections 7.2 and 7.3 of ASHRAE Standard 15 determine the maximum amount of refrigerant allowed in the system, while section 7.4 provides an option to locate equipment outdoors or in a machinery room constructed and maintained under conditions specified in the standard. Section 7.6 of ASHRAE Standard 15 addresses the refrigerants in this proposal when used for human comfort in ''high-probability'' systems, including requirements for nameplates, labels, refrigerant detectors (under certain conditions), airflow initiation and other actions (if a rise in refrigerant concentration is detected), and other restrictions.

In the interest of providing these ODS alternatives to industry quickly, as requested by commenters, and achieving reductions in other, less safe alternatives sooner, the Agency is finalizing use conditions that incorporate by reference the ASHRAE 15–2019 edition, as proposed, rather than a more recent version. EPA recognizes that ASHRAE 15 was recently updated and republished in late 2022. This final rule incorporates by reference all addenda published by the date of the NPRM, as proposed. EPA intends to review the 2022 version of ASHRAE Standard 15 and consider proposing revisions to the use conditions to incorporate by reference the 2022 version of that standard in a future notice and comment rulemaking.

EPA is finalizing the use conditions to ensure safe use of these ODS alternatives regarding their flammability, toxicity, exposure, and environmental effects. As discussed below, commenters generally supported the use conditions. The use conditions identified in this section above are explained below, in section II.E.1, in greater detail.

5. What additional information is EPA including in these final listings?

EPA is providing additional information related to these final listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these final listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes as best practices for safer use.

6. How is EPA responding to comments on chillers?

Comment: Carrier commented expressing their support of listing HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable in chillers. Daikin described their support for listing HFC–32 and R–452B as acceptable in positive displacement chillers. Daikin agreed with ''EPA's analysis of its application, and strongly supported the Agency's proposal to approve R–32 under the SNAP program for the end uses of new rotary and scroll comfort cooling and industrial process air conditioning chillers.'' Daikin voiced strong support and encouraged EPA to approve HFC–32 quickly.

Response: EPA thanks Carrier and Daikin for their support of these listings in the chillers end-use. In this final rule, EPA is listing HFO–1234yf, R–454A, R–454B, R–454C, HFC–32, and R–452B in all centrifugal and positive displacement chillers for comfort cooling, including both commercial AC and IPAC.

Comment: The Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Carrier, Multistack, and Chemours all commented that EPA should not segment the chillers end-uses further by compressor type. Carrier stated that such segmentation leads to unnecessary complexity, while Multistack said it was likely to produce confusion regarding the application of products. Chemours commented that segmentation by compressor type may stifle innovation and create additional challenges for equipment manufacturers and end users working to adopt lower-GWP refrigerants. Chemours further stated that compressor type differentiation should only occur when necessary, because of technology limitations. Chemours also recommended that EPA remove references to chillers for industrial process refrigeration (IPR) to avoid confusion, as well as not distinguishing IPR equipment by compressor type.

Response: EPA acknowledges the concerns commenters expressed regarding segmenting the current chillers end-uses by compressor types for the proposed listings of HFC–32 and R–452B in scroll and rotary chillers. After consideration of the comments received, in particular, the concerns for innovation and unnecessary complexity

[25] We note that while the ASHRAE 15–2019 purpose indicates ''refrigeration systems,'' EPA believes this includes applications that are typically called ''air conditioning.''

as summarized above, EPA agrees that such segmentation is not necessary and could hinder the technical transition to lower-GWP refrigerants. Moreover, EPA does not view segmentation in this instance as providing any additional environmental benefit. Given EPA's understanding of the comments and the SNAP program's historical precedent of grouping together all positive displacement chillers despite their varying compressor types, EPA is finalizing the listings for HFC–32 and R–452B for all chillers rather than breaking out the listings by compressor type for scroll and rotary chillers.

In response to Chemours's comment referencing IPR for chillers, EPA acknowledges the complexities associated with breaking out IPR by compressor type, similarly to chillers. EPA understands the standard UL 60335–2–40 to apply only to comfort cooling and not to process cooling such as occurs in IPR. EPA may address additional substitutes for use in IPR in future rulemakings. The reference to chillers used for IPR remains in the preamble for this final rule to clarify that IPR is not in the scope of listings in this rule.

Comment: Daikin commented on EPA's statement that ''EPA understands that the UL standard [60335–2–40] applies to chillers used for comfort cooling.'' Daikin went on to say ''that neither the scope statement nor the body of this UL standard make any such restriction as to the purpose of the heat pump, air-conditioner, or dehumidifier. Products evaluated to this UL standard are not limited to applications for human comfort and may also be applied to cool or heat various products or processes.'' They suggested that if EPA has safety concerns for IPAC, the Agency should include an ambient operating temperature limit of 140 °F. Daikin addressed the suitability of HFC–32 in IPAC and IPR, noting that ''EPA states in the preamble (87 FR 45514) that 'HFC–32's . . . GWP [is] higher than those of some of the acceptable substitutes for new industrial process AC . . .', implying that HFC–32 is not suitable for industrial process refrigeration. Regardless of whether Daikin's SNAP information notice requested SNAP approval of HFC–32 in the industrial process refrigeration application, HFC–32 is also suitable for that application.''

Response: EPA acknowledges Daikin's concerns about the scope of UL 60335–2–40. Determining the coverage of UL standards to applications not covered in this rule is outside the scope of this rulemaking. However, for informational purposes in response to Daikin's comment, the Agency is providing some additional information regarding UL 60335–2–40. As described in NOTE 104 in UL 60335–2–40, ''This standard does not apply to. . .

- appliances designed exclusively for industrial processing;
- appliances intended to be used in locations where special conditions prevail, such as the presence of a corrosive or explosive atmosphere (dust, vapour or gas).''

Based on EPA's review of standard UL 60335–2–40 and conversations with UL, it is EPA's understanding that equipment for industrial processing, included in the bullet points above, is not covered by this standard, and instead is covered by UL 60335–2–89. Excluding equipment designed solely for industrial processes limits the scope of UL 60335–2–40 to chillers designed for commercial and industrial comfort cooling. If a chiller in an industrial application is used mostly for comfort cooling and also cools processes or industrial equipment, EPA would consider it to fall under the SNAP end-use IPAC rather than IPR. The listings for HFC–32, described in this section above, will apply to these types of chillers on and after the effective date of this rule.

The discussion of ambient operating temperature for IPAC equipment was included as part of the description of the end-use under SNAP, providing an example of possible operating conditions. Any safety concerns surrounding use of HFC–32 in this end-use are sufficiently addressed by the use conditions that apply as described in section II.E.1, below. EPA agrees with Daikin that HFC–32 is suitable for use in IPAC, given that the Agency proposed to list HFC–32 as acceptable in this end-use in SNAP NPRM 25 and is finalizing this listing in this rulemaking.

Under SNAP, IPAC is considered comfort cooling equipment, as it protects the operators in addition to process equipment. EPA's SNAP program considers IPR equipment to be primarily for cooling of a process or product, not primarily for comfort cooling. EPA has not addressed or implied the suitability of HFC–32 for IPR in the NPRM or in this final rule. Any comments on the suitability of HFC–32 in IPR are outside the scope of the rulemaking. EPA is finalizing the listings for HFC–32 in chillers used in comfort cooling for commercial and industrial uses as described in this section of the preamble above.

Comment: AHRI and Chemours noted that some of EPA's risk screens use the Worst Case of Fractionation for Flammability (WCFF) LFL values for the refrigerant blends rather than the Worst Case of Formulation for Flammability (WCF) when determining the lower flammability limit and requested that EPA uses the WCF LFL values for purposes of refrigerant risk analysis. Both commenters noted that UL 60335–2–40 uses the WCF LFL, but that ASHRAE 34–2019 uses the WCFF LFL for all of the blends, except R–452B, in which case both ASHRAE 34 and EPA reference the WCF LFL. The commenters stated that ASHRAE 34 plans to update their WCFF LFL values to WCF LFL values in future editions of the standard as a way to standardize LFLs going forward.

Response: EPA thanks the commenters for this information regarding WCFF and WCF LFL values. The Agency has added a footnote to this preamble acknowledging that this transition from using WCFF values to WCF values is taking place. EPA will consider updating risk screens for R–454A, R–454B, and R–454C in future rulemakings with more recent versions of the ASHRAE standards, using the WCF LFL values. Given the more conservative nature of WCFF LFL values over WCF LFL values, such an update to the risk screens' flammability analysis would result in a less conversative model. The determination of whether the LFL would be exceeded in a catastrophic refrigerant release scenario may change if using the WCF LFL values, possibly showing no flammability risk where there may have been flammability risk previously.

Comment: Several citizens commented, acknowledging the safety of using A2L refrigerants in terms of their flammability and risk to the environment, especially relative to other alternatives available. These commenters stated that EPA should proceed with listing these refrigerants as acceptable.

Response: EPA thanks the commenters for their support of listing the A2L refrigerants—HFO–1234yf and the refrigerants blends—as acceptable. EPA agrees that these refrigerants pose lower overall risk to human health and the environment, and thus we conclude it is appropriate to move forward with finalizing the listings for these refrigerants as described in the preamble above.

B. Residential Dehumidifiers—Listing of HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as Acceptable, Subject to Use Conditions, for Use in New Residential Dehumidifiers

EPA previously listed HFO–1234yf as acceptable, subject to use conditions in

motor vehicle AC in light-duty vehicles (74 FR 53445; October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778; December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276; May 4, 2022). EPA previously listed HFC–32 as acceptable, subject to use conditions, as a substitute in residential and light commercial AC and HPs (80 FR 19454; April 10, 2015 and 86 FR 24444, May 6, 2021) and previously listed R–452B, R–454A, R–454B, and R–454C (hereafter called ''the four refrigerant blends'') as acceptable, subject to use conditions, as substitutes in residential and light commercial AC and HPs (86 FR 24444; May 6, 2021).

This final rulemaking finds HFC–32, HFO–1234yf, and the four refrigerant blends acceptable, subject to use conditions, as substitutes in residential dehumidifiers. After consideration and evaluation of the comments received by the Agency in response to the NPRM, EPA is finalizing the listings for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, and R–454C in residential dehumidifiers as proposed.

Several use conditions finalized for residential dehumidifiers are common to those for other end-uses in section II.A, above, and II.D, below. Because of this similarity, EPA discusses the use conditions that would apply to all three end-uses in section II.E. For residential dehumidifiers, those are the only use conditions EPA is finalizing and require the following:

(1) New equipment only—These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—These refrigerants may be used only in residential dehumidifiers that meet all requirements listed in the 3rd edition, dated November 1, 2019, of UL Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (UL Standard). In cases where this final rule includes requirements different from those of the 3rd edition of UL Standard 60335–2–40, the appliance must meet the requirements of the final rule in place of the requirements in UL 60335–2–40, 3rd Edition. See section II.E below for further discussion on the requirements of this standard that EPA is incorporating by reference.

(3) Warning labels—Several warning labels are required as use conditions as detailed in section II.E below. These labels are similar or verbatim in language to those required by the UL Standard. The warning labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent.

(4) Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The residential dehumidifier shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25mm) from the servicing port and shall be replaced if removed.

EPA notes that there may be other requirements pertaining to the manufacture, use, handling, and disposal of the refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from residential dehumidifiers are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

1. Background on Residential Dehumidifiers

Residential dehumidifiers are primarily used to remove water vapor from ambient air or directly from indoor air for comfort or material preservation purposes in the context of the home.[26] While AC systems often combine cooling and dehumidification, this end-use only serves the latter purpose and is often used in homes for comfort purposes. This equipment is self-contained and circulates air from a room, passes it through a cooling coil, and collects condensed water for disposal. Residential dehumidifiers fall under the scope of the UL 60335–2–40 standard ''Household and Similar Electrical Appliances—Safety—Part 2–40: Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers.''

Some dehumidifiers for residential or light commercial use are integrated with the space air conditioning equipment, for instance via a separate bypass in the duct through which air is dehumidified, a dehumidifying heat pipe across the indoor coil, or other types of energy recovery devices that move sensible and/or latent heat between air streams (*e.g.,* between incoming air and air vented to the outside). EPA classifies this application as a component of a residential or light commercial AC system or HP. As such, EPA has already listed HFC–32 as acceptable for such uses, subject to the use conditions specified in SNAP Rule 23 (86 FR 24444; May 6, 2021).

This final rulemaking finds HFO–1234yf, HFC–32, and the four refrigerant blends acceptable, subject to use conditions, in self-contained residential dehumidifiers. Note that dehumidifiers for residential or light commercial use that are integrated with AC equipment (*i.e.,* not self-contained) are not addressed in this listing because EPA classifies that type of equipment as residential or light commercial AC and HPs.

2. What are the ASHRAE classifications for refrigerant flammability?

HFO–1234yf and HFC–32 are lower flammability refrigerants, and the four refrigerant blends are lower flammability refrigerant blends, all with an ASHRAE safety classification of A2L. See section II.A.2 above for further discussion on ASHRAE classifications.

3. What are HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C and how do they compare to other refrigerants in the same end-use?

See section II.A.3 above for further discussion on the environmental, flammability, toxicity, and exposure information for these refrigerants.

[26] SNAP regulations (see 40 CFR 82.172) define residential use as use by a private individual of a chemical substance or any product containing the chemical substance in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not included in this definition, nor is use in automobiles, watercraft, or aircraft.

Redacted submissions and supporting documentation for HFO–1234yf, HFC–32 and the four refrigerant blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of these substitutes. These assessments are available in the docket for this final rule.[27] [28] [29] [30] [31] [32]

Comparison to other substitutes in this end-use: HFO–1234yf, HFC–32, and the four refrigerant blends all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in new residential dehumidifiers, such as HFC–134a, R–410A, and R–513A, with ODPs of zero. HCFC–22 and R–406A (a blend of HCFC–22 and HCFC–142b) have ODPs of 0.055 and 0.057, respectively, and are listed as acceptable in new residential dehumidifiers. However, HCFC–22 and HCFC–142b are controlled substances under Title VI of the CAA and (unless used, recovered, and recycled) may not be used as a refrigerant in equipment manufactured on or after January 1, 2010, under 40 CFR 82.15(g)(2)(i).[33] Under 40 CFR 82.16, EPA has not issued any production and consumption allowances for HCFC–22 and HCFC–142b (which is a component of R–406A, along with HCFC–22) since 2019.

HFO–1234yf, R–454A, R–454B, and R–454C have GWPs ranging up to about 470, lower than all the acceptable substitutes for new residential dehumidifiers, including R–513A and R–410A with GWPs of 630 and 2,090, respectively. HFC–32 and R–452B have GWPs of 675 and 700, respectively, which are lower than some of the other acceptable substitutes for new residential dehumidifiers, such as HFC–134a, R–410A, and R–507A with GWPs of 1,430, 2,090 and 3,990 respectively, but higher than R–513A, with a GWP of about 630.

Information regarding the toxicity of other available alternatives is provided in the previous listing decisions for new residential dehumidifiers (*https://www.epa.gov/snap/substitutes-residential-dehumidifiers*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit, of HFO–1234yf, HFC–32, and the four refrigerant blends in these end-uses are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFC–32, and the four refrigerant blends in new residential dehumidifiers are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the refrigerants can be mitigated by use consistent with ASHRAE 15 and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risk with HFO–1234yf, HFC–32, and the four refrigerant blends in the new residential dehumidifiers end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced in this section above. While these refrigerants may pose greater flammability risk than other available substitutes in the new residential dehumidifiers end-use, this risk can be mitigated by use consistent with ASHRAE 15 and UL 60335–2–40—which are applicable under the use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is finalizing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in the new residential dehumidifiers end-use.

4. Why is EPA finalizing these specific use conditions?

EPA is finalizing listing HFO–1234yf, HFC–32 and the four refrigerant blends as acceptable, subject to use conditions, for use in residential dehumidifiers for new equipment. EPA is finalizing the use conditions to ensure safe use of these ODS alternatives regarding their flammability, toxicity, exposure, and environmental effects. As discussed below, commenters generally supported the use conditions. The use conditions identified in this section above are explained below in section II.E.1 in greater detail.

5. What additional information is EPA including in these final listings?

EPA is providing additional information related to these final listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these final listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes as best practices for safer use.

6. How is EPA responding to comments on residential dehumidifiers?

Comment: Several commenters (AprilAire, the Association of Home Appliance Manufacturers (AHAM), Competition Advocates, GE Appliances/Hair, and Madison Indoor Air Quality (MIAQ)) voiced general support for the proposed listing of HFC–32 as acceptable, subject to use conditions, in residential dehumidifiers. AHAM noted the industry is ''already in the process of transitioning to lower GWP refrigerants for these products and prefers a national regulatory framework under which it can operate with a clear path to compliances.'' Competition Advocates commented on their SNAP application for HFC–32 in residential dehumidifiers and noted the importance of transitioning to lower-GWP alternatives. ''SNAP approval of R–32 use in residential dehumidifiers will allow the direct and indirect climate benefits of this lower GWP and more energy efficient refrigerant to be realized as consumers purchase and use these products.'' GE Appliances commented that they filed a SNAP application for the use of HFC–32 in residential dehumidifiers and noted support for SNAP Rule 25, urging EPA to move quickly in finalizing. MIAQ additionally expressed their support for listing R–454B as acceptable in the end-use.

Response: EPA acknowledges these commenters' general support for the proposed listings for HFC–32 and R–454B in residential dehumidifiers, and appreciates the additional information provided by AHAM and Competition Advocates on the transition to lower-GWP refrigerants. EPA agrees with these comments and is aware that industry has already started this transition. After

[27] ICF, 2022g. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFC–32.

[28] ICF, 2022h. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–452B.

[29] ICF, 2022i Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454A.

[30] ICF, 2022j. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454B.

[31] ICF, 2022k. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: R–454C.

[32] ICF, 2022l. Risk Screen on Substitutes in Residential Dehumidifiers (New Equipment); Substitute: HFO–1234yf.

[33] The regulations at 40 CFR 82.15(g)(2)(ii) provide limited exceptions to the prohibitions in 82.15(g)(2)(i), including for HCFC–22 ''for use as a refrigerant in appliances manufactured before January 1, 2012, provided that the components are manufactured prior to January 1, 2010, and are specified in a building permit or a contract dated before January 1, 2010, for use on a particular project.''

considering all the public comments on this proposal, we are finalizing these listings as described in this section, II.B.

Comment: AHRI, Carrier, Chemours, Desert-Aire, and MIAQ suggested that ''EPA may wish to incorporate residential and non-residential dehumidifiers into the currently used SNAP category of Residential and Light Commercial Air Conditioning and Heat Pumps,'' as all these products are developed together through UL 60335–2–40 (AHRI). MIAQ also recommended EPA ''revise and clarify the classification of different types of dehumidifiers to align with the definitions in the U.S. Department of Energy (DOE) test procedure at 10 Code of Federal Regulations (CFR) 430, Subpart B, Appendix X1 or in 10 CFR 430.2 and that the CFR definitions take precedence and may be modified by DOE.''

Response: EPA thanks the commenters for their suggestions on how to classify dehumidification equipment. EPA is finalizing the listings for residential dehumidifiers as proposed. For a discussion on how EPA has decided to categorize dehumidification equipment, see the Agency's response to comment included in section II.C.2, below.

C. Non-Residential Dehumidifiers—Decision Not To Finalize the Proposed Listing of HFC–32 as Acceptable, Subject to Use Conditions, for Use in New Non-Residential Dehumidifiers

After review of comments, EPA agrees that a new non-residential end-use is not necessary. Therefore, EPA is not finalizing the proposed listing of HFC–32 as acceptable, subject to use conditions for use in a new end-use for new non-residential dehumidifiers and instead is clarifying that SNAP considers dehumidifiers for non-residential use to fall under the residential and light commercial AC and HPs end-use. HFC–32 has previously been listed as acceptable for use in this end-use.

1. Why is EPA not finalizing the proposal to list HFC–32 as acceptable, subject to use conditions, in new non-residential dehumidifiers?

After review of the comments received relating to the creation of the non-residential end-use, EPA determined finalizing this section of the proposal is unnecessary. Commenters stated that before the NPRM, industry understood dehumidifiers in a commercial, or other non-residential, context to be covered by the end-use residential and light commercial AC and HPs. If EPA were to finalize this new end-use, it would cause unnecessary confusion regarding which end-use certain dehumidification equipment would be covered by under the SNAP program. Given that dehumidifiers are covered by the same UL Standard as equipment included in residential and light commercial AC and HPs, and that charge sizes and room sizes are similar to light commercial AC systems, EPA considers the risk profile of non-residential dehumidifiers when using flammable refrigerants to be similar to that of other equipment in that end-use.[34] Thus, in light of these comments and EPA's reflection on the current listings, standards, and the lack of any additional environmental protection provided by a separate listing for these dehumidifiers, EPA has determined that it is not necessary to list non-residential dehumidifiers as a separate end-use. Instead, with today's action, EPA is clarifying that SNAP considers the equipment described in the non-residential dehumidifier section of the NPRM to be part of the SNAP end-use residential and light commercial AC and HPs, with alternatives listed acceptable previously in that end-use applying to dehumidifiers used in non-residential settings.

2. How is EPA responding to comments on non-residential dehumidifiers?

Comment: Anden, a manufacturer of agricultural dehumidifiers, commented in support of listing HFC–32 as acceptable in the non-residential dehumidifiers end-use. In contrast, AHRI, Carrier, Chemours, Desert-Aire, and MIAQ submitted comments disagreeing with the proposed creation of a new non-residential dehumidifier end-use and the proposed listing of HFC–32 as the only refrigerant acceptable for this type of equipment.

Chemours commented requesting EPA not to finalize creation of the new non-residential dehumidifiers end-use, given that industry has been classifying this type of equipment under residential and light commercial AC and HPs up until SNAP NPRM 25, and that the transition to lower-GWP options for non-residential dehumidifiers relies heavily on the availability of substitutes already listed acceptable in this end-use. Chemours goes on to discuss how it would be a large burden on stakeholders to resubmit SNAP applications for all the alternatives listed in residential and light commercial AC and HPs, and disruption of the current manufacturing of OEMs who had been operating under the assumption that certain refrigerants were allowed for use in their non-residential dehumidifier equipment that will no longer be acceptable if this end-use creation is finalized. MIAQ also suggested classifying non-residential dehumidifiers (or ''non-consumer dehumidifiers'') as part of the residential and light commercial AC and HPs end-use.

AHRI and Desert-Aire commented suggesting EPA to include all dehumidifiers (both for residential and non-residential applications) into the existing residential and light commercial AC and HPs end-use, given that these equipment types are all covered under the same UL 60335–2–40 standard.

As mentioned above in section II.B, AHRI, Carrier, Chemours, Desert-Aire, and MIAQ suggested combining both the residential dehumidifiers and non-residential dehumidifiers end-uses into one end-use, ''dehumidifiers.'' MIAQ commented recommending that EPA adopt DOE's definition of consumer product dehumidifiers, into the two subcategories of ''whole home'' and ''portable.'' MIAQ also suggested defining non-residential dehumidifiers as dehumidifiers that are not consumer products. Carrier, Chemours, Desert-Aire, and MIAQ also suggested that the five refrigerants being finalized in this rulemaking for residential dehumidifiers—HFO–1234yf, R–452B, R–454A, R–454B, and R–454C—should also be listed for non-residential dehumidifiers. Desert-Aire cited similarities in the use-cases of the end-uses as justification for including these refrigerants in both end-uses. MIAQ further suggested allowing all previous refrigerants listed as acceptable under residential dehumidifiers to be applied to all types of dehumidifiers. Chemours and MIAQ cited certain equipment that cannot clearly be placed into either residential and light commercial AC and HPs or non-residential dehumidifiers based on the definitions proposed by EPA, including dehumidifiers that are ducted into an HVAC system and can be run entirely independently of any AC.

Response: EPA acknowledges the commenters' varied suggestions on the best path forward regarding dehumidification equipment classification. It is clear from EPA's review of the myriad comments received that the non-residential dehumidifier end-use as proposed is not necessary and that industry's understanding, previously to the proposed rule, was that non-residential dehumidifiers were part of the residential and light commercial AC and

[34] ICF, 2023a. Risk Screen on Substitutes in Residential and Light Commercial Air Conditioning and Heat Pumps (New Equipment); Substitute: HFC–32 (Difluoromethane).

HPs end-use. Moreover, if EPA had finalized this provision as proposed, it may have resulted in a review of other listed refrigerants to ensure that sufficient refrigerant options were available for this type of equipment. EPA agrees that by including non-residential dehumidifying equipment in an existing end-use, there will be sufficient refrigerant options available for this type of equipment. Thus, EPA has decided not to finalize the proposed creation of a new non-residential dehumidifiers end-use. Instead, EPA concludes that all dehumidifiers for use in non-residential settings are appropriately covered under the existing residential and light commercial AC and HPs end-use. Based on the action EPA is taking today, manufacturers of self-contained dehumidifiers for use in non-residential settings will be able to use HFC–32, as well as other substitutes that are listed as acceptable in the residential and light commercial AC and HPs end-use.

EPA acknowledges the suggestion to combine all dehumidifiers, including the current residential dehumidifiers end-use, with the residential and light commercial AC and HPs end-use. These types of equipment are covered by the same safety standards and also have significant overlap in their risk profiles. EPA notes that the Agency has in the past separated residential dehumidifiers from residential AC, stating that ''While air conditioning systems often combine cooling and dehumidification, this application [residential dehumidifiers] serves only the latter purpose'' (March 18, 1994; 59 FR at 13071) and ''. . . we use the term 'air conditioner' and 'AC' to cover equipment that cools air, heats air, or has the function to do both (typically referred to as a 'heat pump'). While such equipment might humidify or dehumidify the air, the term does not include equipment whose purpose is for latent cooling only (*i.e.,* dehumidifiers), which are a separate end-use under SNAP'' (June 12, 2020; 85 FR at 35880). EPA has not made comparable statements to separate commercial or industrial comfort cooling from commercial or industrial dehumidification, but neither has the Agency said before that these are in the same end-use. EPA may consider combining residential dehumidifiers with the residential and light commercial AC and HPs end-use in a future rulemaking, to give the public sufficient notice and opportunity to comment before potentially making such a change to the existing end-uses.

Similarly, if EPA were to consider combining residential dehumidifiers with non-residential dehumidifiers, creating a general ''dehumidifiers'' end-use, we would also take this action through notice-and-comment rulemaking. Although these equipment types are also similar, EPA believes that the ''light commercial'' aspect of the residential and light commercial AC and HPs end-use better covers the risk profile of non-residential dehumidifiers. These types of equipment are all covered by the UL 60335–2–40 safety standard and have significant overlap in their risk profiles because of similar room sizes and charge sizes required for self-contained ACs and HPs and dehumidifiers used in non-residential settings.

Concerning the suggestion that EPA's SNAP program use DOE's definitions for dehumidifiers, EPA understands that consistency in equipment definitions between agencies is useful for stakeholders. However, EPA and DOE operate under separate authorities and in this context, these authorities have separate goals. Currently, the DOE's definitions of ''whole home'' versus ''portable'' dehumidifiers are similar to the SNAP definitions. EPA describes ''whole home'' dehumidifiers as ducted equipment, covered by the residential and light commercial AC and HPs end-use, while ''self-contained'' dehumidifiers, roughly equivalent to DOE's ''portable'' dehumidifiers, are covered by the residential dehumidifier end-use. DOE also defines equipment by user, describing equipment as either ''consumer'' or ''non-consumer'' products, whereas EPA's definitions reference whether or not the equipment is used in residential contexts. In this final rule, EPA is describing dehumidification equipment independently of DOE. However, EPA may consider taking action through a notice-and-comment rulemaking at a future date to adopt new definitions.

While the suggestion to list the same six refrigerants proposed in the residential dehumidifiers end-use in the non-residential dehumidifiers end-use would provide more than HFC–32 as an option for the equipment, by including non-residential dehumidifiers in the residential and light commercial AC and HPs end-use, many more refrigerant options, beyond the six discussed, will be available.

D. Residential and Light Commercial AC and Heat Pumps (HPs)—Revision of Use Conditions Provided in the Previous Listing of HFC–32 as Acceptable for Use in New Self-Contained Room ACs and HPs

EPA previously listed HFC–32 as acceptable, subject to use conditions, in new self-contained room ACs and HPs in SNAP Rule 19 (80 FR 19461; April 10, 2015). In this action we are finalizing updates to applicable use conditions for new self-contained room ACs and HPs using HFC–32 to be consistent with the use conditions finalized in SNAP Rule 23 (86 FR 24444; May 6, 2021). EPA proposed replacing the previously required use conditions in compliance with UL 484 Standard, 8th Edition, with updated use conditions in compliance with UL 60335–2–40 Standard, 3rd Edition, effective 30 days after publication of the final rule. However, after review of the comments received, EPA has decided that manufacturers will be allowed to manufacture such equipment either according to UL 484, 8th Edition or according to UL 60335–2–40, 3rd Edition on or after the effective date of this final rule up to and including January 1st, 2024. Beginning January 2nd, 2024, UL will sunset UL 484 and only warning labels in compliance with UL 60335–2–40 will be permitted. Equipment manufactured before the effective date of this final action in compliance with the SNAP requirements applicable at the time of manufacture will remain in compliance.

1. Background on Self-Contained Room ACs and HPs

The residential and light commercial AC and HPs end-use includes equipment for cooling air in individual rooms, in single-family homes, and sometimes in small commercial buildings. This end-use differs from commercial comfort AC, which uses chillers that cool water that is then used to cool air throughout a large commercial building, such as an office building or hotel. Examples of equipment for residential and light commercial AC and HPs include:

- Central ACs, also called unitary AC or unitary split systems. These systems include an outdoor unit with a condenser and a compressor, refrigerant lines, an indoor unit with an evaporator, and ducts to carry cooled air throughout a building. Central heat pumps are similar but offer the choice to either heat or cool the indoor space. These systems are not addressed in this rule.[35]
- Multi-split ACs. These systems include one or more outdoor unit(s) with a condenser and a compressor and

[35] EPA has received submissions for HFC–32 and the hydrocarbon blends R–441A and R–443A, and no other flammable refrigerants, in new unitary central air conditioners. This action does not address flammable refrigerants in unitary central air conditioners. Introduction into interstate commerce of refrigerants without giving timely and adequate notice to EPA is in violation of Section 612(e) of the CAA and the SNAP regulations at 40 CFR part 82, subpart G.

multiple indoor units, each of which is connected to the outdoor unit by refrigerant lines. These systems are not addressed in this rule.

• Mini-split ACs. These systems include an outdoor unit with a condenser and a compressor and a single indoor unit that is connected to the outdoor unit by refrigerant lines. Cooled air exits directly from the indoor unit rather than being carried through ducts. These systems are not addressed in this rule.

• Window ACs. These are self-contained units that fit in a window with the condenser extending outside the window. These types of units are regulated under this rule.

• Packaged terminal ACs (PTACs) and packaged terminal HPs (PTHPs). These are self-contained units that consist of a separate, un-encased combination of heating and cooling assemblies mounted through a wall.[36] These types of units are regulated under this rule.

• Portable room ACs. These are self-contained, factory-sealed, single package units that are designed to be moved easily from room to room and are intended to provide supplemental cooling within a room. These units typically have wheels or casters for portability and, under the UL 484 Standard for room ACs, must have a fan which operates continuously when the unit is on. Portable room ACs may contain an exhaust hose that can be placed through a window or door to eject heat to the outside. These types of units are regulated under this rule.

Of these types of equipment, window ACs, PTACs, PTHPs, and portable room ACs are self-contained equipment with the condenser, compressor, evaporator, and tubing all within casing in a single unit. These are the types of equipment for which EPA previously listed HFC–32 as acceptable, subject to use conditions, as codified in appendix R to 40 CFR part 82, subpart G.

2. What are the ASHRAE classifications for refrigerant flammability?

See section II.A.2 above for further discussion on ASHRAE classifications.

3. What is HFC–32 and how does it compare to other refrigerants in the same end-use?

See section II.A.3 above for further discussion on the environmental, flammability, toxicity, and exposure information for HFC–32.

[36] PTACs are intended for use in a single room, or potentially for two rooms next to each other, and use no external refrigerant lines. Typical applications include motel or dormitory air conditioners.

Redacted submissions and supporting documentation for HFC–32 is provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of HFC–32. This assessment is available in the docket for this final rule.[37]

Comparison to other substitutes in this end-use: HFC–32 has an ODP of zero, the same as other acceptable substitutes in this end-use, such as R–290, HFC–134a, R–410A, and R–513A, with ODPs of zero.

HFC–32 has a GWP of 675, higher than some of the acceptable substitutes for residential and light commercial air conditioning and heat pumps, including ammonia absorption, R–290, and R–454B with GWPs of zero, three, and about 470, respectively. HFC–32's GWP is lower than some of the acceptable substitutes for residential and light commercial air conditioning and heat pumps, such as R–452B, HFC–134a, and R–410A, with GWPs of approximately 700, 1,430, and 2,090, respectively.

Information on the toxicity and flammability risk of HFC–32 in this end-use category was provided in SNAP Rule 19. In summary, EPA found the toxicity risks of HFC–32 to be comparable to or lower than other acceptable alternatives. Although we noted that the flammability risk of HFC–32 may be greater than that of other available, nonflammable substitutes in the same end-use, we found that those risks are not significant even under worst-case assumptions. These risks of HFC–32 are similar to the risks of other flammable refrigerants found acceptable for this end-use category in SNAP Rule 23 (*i.e.,* R–452B, R–454A, R–454B, R–454C, and R–457A). We noted there that this risk can be minimized by use consistent with industry standards such as UL 60335–2–40—which would be required by our proposed revision to the use conditions—and other industry standards, such as ASHRAE 15, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and air conditioning industry. The updates to the use conditions proposed maintain the low potential risk associated with the flammability of this alternative so that it will not pose significantly greater risk than other acceptable substitutes in this end-use category.

[37] ICF, 2022n. Risk Screen on Substitutes in Residential and Light Commercial Air Conditioning and Heat Pumps (New Equipment); Substitute: HFC–32 (Difluoromethane).

4. What use conditions previously applied to this refrigerant in this end-use category?

EPA previously found HFC–32 acceptable, subject to use conditions, in new residential and light commercial AC for self-contained room AC units, including PTAC units, PTHPs, window AC and HP units, and portable AC units, designed for use in a single room in SNAP Rule 19 (80 FR 19454; April 10, 2015). Those requirements are codified in appendix R of 40 CFR part 82, subpart G. EPA provided information on the environmental and health properties of HFC–32 and the various substitutes available at that time for use in this end-use. Additionally, EPA's risk screen for this refrigerant is available in the docket for this previous rulemaking (EPA–HQ–OAR–2013–0748).

HFC–32 has an ASHRAE classification of A2L, indicating that it has low toxicity and lower flammability. The flammability risks are of potential concern because residential ACs and HPs traditionally used refrigerants that are not flammable. In the presence of a higher energy ignition source (*e.g.,* lighted match or a cigarette lighter), an explosion or a fire could occur if the concentration of HFC–32 were to exceed the LFL of 144,000 ppm by volume. In the preamble for the original listing for three flammable refrigerants, including HFC–32 and two A3 refrigerants, in self-contained ACs and HPs in SNAP Rule 19, EPA had described lower energy ignition sources (*e.g.,* static electricity, a spark resulting from a closing door, or a cigarette) as possible ignition sources that were appropriate for the two A3 refrigerants, but not for HFC–32. This same description of ignition sources was used in the preamble of the July 2022 NPRM for this rule and it was not revised from the original listing in SNAP Rule 19 to only apply to HFC–32. After considering comments received on the proposal, in this preamble to the final rule, EPA is clarifying that A2Ls such as HFC–32 require greater energy input for ignition than previously described, and that a higher energy source, such as a lighted match, would be necessary.

Previously, to address flammability, EPA listed HFC–32 as acceptable in new self-contained room AC units, subject to use conditions. The previous use conditions addressed safe use of this flammable refrigerant and included incorporation by reference of Supplement SA to the 8th edition (August 2, 2012) of UL Standard 484, refrigerant charge size limits based on cooling capacity and type of equipment, and requirements for markings and

warning labels on equipment using the refrigerant to inform consumers and technicians of potential flammability hazards. Without appropriate use conditions, the flammability risk posed by this refrigerant could be higher than non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and because the refrigerant could be used in existing equipment that has not been designed specifically to minimize flammability risks. Our assessment and listing decisions in SNAP Rule 19 (80 FR 19454; April 10, 2015) found that with the use conditions, the overall risk of this substitute, including the risk due to flammability, does not present significantly greater risk in the end-use than other substitutes that are currently or potentially available for that same end-use.

5. What updates to the use conditions is EPA finalizing?

EPA is finalizing the proposed updates to the use conditions that apply to HFC–32 in new self-contained room ACs and HPs for equipment manufactured after the effective date of this final rule, with the change from proposal that UL 484 may continue to be used up to and including its official sunset date, per UL, of January 1st, 2024. In the time between the effective date of this final rule and January 1st, 2024, manufacturers will be allowed to follow either UL 484, 8th Edition or UL 60335–2–40, 3rd Edition. The period during which manufacturers may follow either standard provides sufficient time for manufacturers to transition from UL 484 to UL 60335–2–40. EPA is making this change after considering public comment on the timing for the adopting UL 60335–2–40, discussed further below in this section. Several of the updated use conditions finalized for self-contained room ACs and HPs are common to those finalized for other end-uses in sections II.A and II.B above. Because of this similarity, EPA discusses the use conditions that apply to all three end-uses in section II.E. For HFC–32 in self-contained room ACs and HPs, these are the use conditions EPA is finalizing. In summary, with the updates finalized, the use conditions are the following:

(1) New equipment only—This refrigerant may only be used in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* this substitute may not be used as a conversion or ''retrofit'' refrigerant for existing equipment. This use condition is the same as what currently exists for HFC–32 in this end-use category.

(2) UL Standard—This refrigerant (*i.e.,* in this case, HFC–32) may be used only in equipment (*i.e.,* in this case, self-contained room ACs and HPs) that meet all requirements listed either (a) in the 3rd edition, dated November 1, 2019, of UL Standard 60335–2–40, ''Household and Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air Conditioners and Dehumidifiers'' (UL Standard) or (b) in Supplement SA to the 8th edition, dated August 2nd, 2012, of UL 484, ''Room Air Conditioners.'' In cases where this final rule includes requirements different than those of the 3rd edition of UL Standard 60335–2–40 or of Appendix SA in the 8th edition of UL 484, EPA is requiring that the appliance would need to meet the requirements of this final rule in place of the requirements in the UL Standards. See section II.E below for further discussion on the requirements of the UL 60335–2–40 standard that EPA is incorporating by reference. This change in the use conditions allows the standard to which the equipment must adhere to be either Supplement SA to the 8th edition, dated August 2nd, 2012, of UL Standard 484, ''Room Air Conditioners'' or the 3rd edition of UL 60335–2–40 until the UL 484 standard sunsets on January 1st, 2024. After that date, self-contained room ACs and HPs must follow the 3rd edition of UL 60335–2–40.[38]

(3) Warning labels—Several warning labels were proposed as use conditions as detailed in section II.E below for equipment being designed in compliance with UL 60335–2–40. However, the previously required warning labels in compliance with UL 484 will also be acceptable through January 1st, 2024. Therefore, manufacturers will be allowed to manufacture such equipment either according to UL 484, 8th Edition or according to UL 60335–2–40, 3rd Edition on or after the effective date of this final rule up to and including January 1st, 2024; after this date, UL will sunset UL 484 and only UL 60335–2–40 will apply. Beginning January 2nd, 2024, only warning labels in compliance with UL 60335–2–40 will be permitted. Equipment manufactured before the effective date of this final action in compliance with the SNAP requirements applicable at the time of manufacture will remain in compliance. Equipment designed in compliance with either UL standard will be required to use warning label language that aligns with that standard using the font size specified by SNAP regulatory requirements. These labels are similar in language to those required by UL standards 484, 8th Edition and 60335–2–40, 3rd Edition. The warning labels must be provided in letters no less than 6.4 mm (1⁄4 inch) high and must be permanent. While the font size is the same as in the use conditions that currently apply, several revisions to the labels and the language in them have changed for manufactures opting to adhere with the 3rd edition of UL 60335–2–40.

(4) Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The equipment shall have marked service ports, pipes, hoses, and other devices through which the refrigerant is serviced. Markings shall extend at least one inch (25 mm) from the servicing port and shall be replaced if removed. This use condition is the same as what currently exists for HFC–32 in this end-use category.

The amendment to the regulatory text in appendix R is to indicate that the use conditions finalized apply to HFC–32 self-contained room AC units manufactured on or after the effective date of this final rule, May 30, 2023. Equipment manufactured before the effective date of the final rule is not affected by this action and is hence subject to the use conditions included in appendix R at the time they were manufactured. The finalized revisions to the current regulatory text update the use conditions that were included in the previous listing decision for HFC–32 in self-contained room ACs and HPs. EPA notes that there may be other requirements pertaining to the manufacture, use, handling, and disposal of the refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition,[4] or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from residential and light AC appliances are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

6. How do the updated use conditions differ from the previous requirements and why is EPA finalizing the change to the use conditions?

For manufacturers that adhere to UL 60335–2–40, 3rd Edition, the updated use conditions EPA is finalizing are similar to the ones that already exist in

[38] EPA anticipates that we may propose to further update this use condition to more recent editions of the UL 60335–2–40 standard in a future rulemaking and may consider allowing more than one edition to be used during a specified time period.

appendix R of 40 CFR part 82, subpart G for HFC–32 in this end-use category. The final requirements that HFC–32 must be used in new equipment only and must include red markings at service ports are repeated in this final listing. Existing room ACs using HFC–32 manufactured before the effective date of this final rule are not affected by the updated use conditions. In addition, manufacturers may opt to continue to adhere to the requirements in UL 484, 8th Edition up to and including its sunset date of January 1st, 2024. After this date, the use conditions that require adherence solely with UL 60335–2–40, 3rd Edition, described below and in greater detail in section II.E.1, will be mandatory for all relevant equipment.

The warning labels EPA is finalizing for the use of HFC–32 in self-contained room ACs and HPs designed to conform with UL 60335–2–40 are similar to those required as use conditions for the use of HFC–32 in residential and light commercial AC and HPs (excluding self-contained room ACs and HPs) and for R–452B, R–454A, R–454B, R–454C, and R–457A in residential and light commercial AC and HPs (including self-contained room ACs and HPs), included in SNAP Rule 23 in 2021 (86 FR 24463; May 6, 2021). EPA finds that using a common set of labels will aid in compliance, especially for a manufacturer that uses more than one of these refrigerants or produces both self-contained room ACs and HPs and other types of residential and light commercial AC and HPs. The updated label options EPA is finalizing use the word ''WARNING'' in lieu of ''DANGER'' or ''CAUTION'' and change ''Risk of Fire or Explosion'' to just ''Risk of Fire.'' However, the previous wording consistent with UL 484, 8th Edition is allowable up to and including January 1st, 2024 for manufacturers who would prefer transitioning to UL 60335–2–40, 3rd Edition at a date later than the effective date of this final rule. EPA is finalizing that the labels must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent, which is identical to the current requirement for HFC–32 in self-contained room ACs and HPs. In contrast, for manufacturers choosing to continue to make self-contained room ACs and HPs using R–32 according to Appendix SA and Appendices B through F of the 8th edition of UL 484 up to and including January 1st, 2024, rather than making such equipment according to UL 60335–2–40, the existing labeling requirements in appendix R to 40 CFR part 82, subpart G (listing 10) will continue to apply.

EPA is updating the standard incorporated by reference in the use conditions, requiring users either to follow certain sections of the 2012 version of UL 484 or to adhere to the 3rd edition of UL 60335–2–40. Both UL Standard 484 and UL Standard 60335–2–40 were developed in an open and consensus-based approach, with the assistance of experts in the refrigeration and AC industry as well as experts involved in assessing the safety of products. The revision cycle for the 3rd edition, including final recirculation, concluded with its publication on November 1, 2019. The 2019 UL Standard overlaps with, and eventually will replace, the previously published version of several standards, including UL Standard 484, 8th Edition on January 2nd, 2024. EPA was aware of the continuing progress of UL Standards to address flammable refrigerants more appropriately. In the 2021 SNAP Rule (SNAP Rule 23) listing HFC–32 for other categories within the residential and light commercial AC and HPs end-use, we stated, ''EPA understands that the standard we relied on in [SNAP] Rule 19 might 'sunset' in the future. Therefore, we will continue to evaluate the market for the equipment addressed in that rule, including HFC–32 in self-contained room ACs, and whether to establish new or revised use conditions that reference UL 603352–40'' (86 FR 24463; May 6, 2021). Today, we are finalizing such a change knowing that UL is replacing the standard to which such equipment is certified from UL 484 to the newer UL 60335–2–40 standard as of January 2nd, 2024. In addition, in order to allow manufacturers more time to transition their product lines from the earlier UL 484 standard to the UL 60335–2–40 standard, while still ensuring the safety of equipment manufactured with flammable refrigerants, EPA is allowing self-contained room ACs and HPs manufactured with HFC–32 to follow either standard up to and including January 1st, 2024.

Updating the UL standard incorporated as a use condition will allow more consistency among the products within this end-use and between HFC–32 and the five A2L refrigerants listed as acceptable, subject to use conditions, for this end-use including those listed for self-contained room ACs and HPs in SNAP Rule 23. This change will allow the industry to focus on the more recent standard. The change will be helpful in implementing any transitions needed or planned for manufacturers, installers, and technicians. A manufacturer, who may offer different products within this end-use with different refrigerants, could use similar processes, such as in developing and applying the warning labels required. Installers and technician, likewise, would not need to reference different standards depending on the type of equipment and the particular A2L refrigerant being used in that equipment, when putting in a new piece of equipment or servicing that equipment.

Another revision to the use conditions is charge sizes. In the 2019 SNAP Rule, charge sizes from both UL 484, 8th Edition, and those stipulated by tables within the rule needed to be followed. These will both continue to be requirements for equipment designed according to UL 484, 8th Edition. However, for equipment designed according to the 3rd edition of UL 60335–2–40, rather than requiring examination of both items and determining which charge size is lower, the updated use conditions will rely on a single document, UL 60335–2–40, 3rd Edition. As stated above, manufacturers will be allowed to select which standard they would like their equipment to follow, up to and including the UL 484, 8th Edition sunset date of January 1st, 2024, and equipment will be considered in compliance if their charge sizes are determined either by UL 60335–2–40, 3rd Edition or by UL 484, 8th Edition in combination with the tables in 40 CFR part 82, subpart G, appendix R.

7. What is the acceptability status of HFC–32 in self-contained room ACs and HPs?

The use conditions finalized in this action apply to new self-contained room ACs and HPs using HFC–32 manufactured on or after the effective date of this final rule (30 days after publication in the **Federal Register**). This final rule does not apply to or affect equipment manufactured before the effective date of this action and manufactured in compliance with the SNAP requirements applicable at the time of manufacture. For the purposes of the SNAP program, EPA views equipment to be manufactured when the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes. Self-contained room ACs and HPs are factory charged, meaning manufacture happens in the factory and thus prior to distribution in U.S. commerce. For such products manufactured between May 11, 2015, and the effective date of this final rule, the applicable use conditions under SNAP would be those in SNAP

Rule 19 (which took effect May 11, 2015) and as listed in appendix R of 40 CFR part 82, subpart G (listing 6. Such products are permitted to be warehoused and sold in U.S. commerce, as long as the products were manufactured (*i.e.,* the refrigerant circuit was complete) before May 30, 2023. For self-contained room ACs and HPs using HFC–32 manufactured on or after the effective date of this final rule and through January 1, 2024, the use conditions finalized and listed in the revisions to appendix R (either listing 6, if following UL 484, or listing 8 if following UL 60335–2–40) would apply under SNAP. For self-contained room ACs and HPs using HFC–32 manufactured on or after January 2, 2024, the use conditions finalized in listing 8, including following UL 60335–2–40, will apply under SNAP, recognizing that UL intends to sunset UL 484 as of January 1, 2024.

8. What additional information is EPA including in these final listings?

EPA is providing additional information related to these final listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 below for further discussion on what additional information EPA is including in these final listings. EPA notes that the additional information is similar to, but not identical with, the additional information in the listing for HFC–32 in self-contained room ACs and HPs in SNAP Rule 19. EPA is finalizing additional information consistent with that included in the other final listings for air conditioning equipment in this rule and consistent with that included in the listings for four A2L refrigerant blends listed as acceptable subject to use conditions in self-contained room ACs and HPs in SNAP Rule 23. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes as best practices for safer use.

9. How is EPA responding to comments on updating use conditions for HFC–32 in self-contained room ACs and HPs?

Comment: AHAM, GE Appliances, and LG Electronics all submitted comments that the omission of a transition period between the use conditions requiring the UL 484 standard and the UL 60335–2–40 standard is inappropriate, and they request an overlapping timeframe when either of the two standards may be used. GE Appliances stated that manufacturers need time to convert products and manufacturing facilities when moving from compliance with one standard to the other. Similarly, AHAM stated that, regardless of the final rule's effective date, EPA must ''allow for some overlap of acceptable use conditions to allow for product conversion because the absence of this overlap places exceptional burden on appliance manufacturers,'' and noted that there are currently home comfort products on the market based on prior use conditions under SNAP Rule 19. In AHAM's words, ''EPA needs to keep multiple versions of these standards available for products to allow manufacturers time to transition from one standard to another as they do under the current standards certification process.'' GE Appliances noted that the phaseout of UL 484 and transition to the new standard has already been determined by UL to be January 1st, 2024. Competition Advocates requested that EPA revise its proposed SNAP Rule 25 use conditions to allow for an extended implementation time. LG Electronics supported EPA's action but noted that there is no time for product conversion from UL 484 to UL 60335–2–40 under the proposed SNAP Rule 25. LG Electronics suggested that EPA should allow for some overlap of use conditions to allow for product conversion, so that manufacturers can comply with relevant safety standards.

AHRI suggested that EPA may want to consider an example of the process for sunsetting standards used by nationally recognized testing laboratories (NRTLs). They said that NRTLs will test and list equipment to various versions of standards starting at an agreed-upon date, and that there may be a transition period of several years until an older standard is sunset. AHRI also stated that existing equipment remains listed to existing safety standards until the manufacturer requests to have it changed, that equipment with major revisions is treated as ''new'' equipment, and that equipment with minor revisions does not require re-evaluation. AHRI stated that this would ensure that equipment can still be listed to these standards, taking care to avoid creating a cumbersome additional process to re-harmonize among companies and all of the NRTLs.

Daikin commented that they fully support the provision of the proposal to update use conditions for HFC–32 to allow warning labels in line with UL 60335–2–40 to eliminate the disparity between the warning use condition for HFC–32 PTACs (listed in SNAP Rule 19) and the other SNAP-approved A2L PTACs, listed in SNAP Rule 23.

Response: EPA thanks the commenters for bringing to our attention the necessity of a transition period where either UL 484, 8th Edition or UL 60335–2–40, 3rd Edition could apply. EPA agrees with commenters that only allowing 30 days to transition from one standard to another is insufficient, given equipment production timelines and challenges associated with updating equipment on short notice. Further, we note that both standards address the potential hazards of using flammable refrigerants, allowing HFC–32 to be used as safely as other refrigerants in this end-use. Therefore, to offer manufacturers time for product conversion, we are providing a transition period where either standard may be used. EPA is finalizing that, as of the effective date of this final rule, both compliance with UL 484 and compliance with the 3rd edition of UL 60335–2–40 will be acceptable until January 1st, 2024, when the UL 484 standard sunsets. The overlap of these standards will provide manufacturers time to transition from one standard to the next, including the different warning labels. This differs from the proposed use conditions, which proposed compliance with only UL 60335–2–40 warning labels as of this final rule's effective date. Beginning January 2nd, 2024, compliance with UL 60335–2–40 will apply, given that January 1st, 2024, is the official sunset date of UL 484 per UL. After that date, only the UL 60335–2–40 standard applies under SNAP.

EPA appreciates the information provided by AHRI on the process for ''sunsetting standards used by NRTLs,'' and we agree that it is important to have a pathway to compliance as new standards become available. EPA believes that adopting the same sunset date as UL will provide the greatest clarity for industry on how long UL 484 will be applicable under SNAP.

EPA acknowledges Daikin's support of the proposal to update the warning label use conditions for the existing listing of HFC–32 in self-contained room ACs and HPs, originally listed in SNAP Rule 19.

Comment: Daikin submitted comment on ignition sources for self-contained HFC–32 AC and HP units referenced in SNAP Rule 19 use conditions, stating that ''The ignition source examples that EPA cites in the quoted language [*e.g.,* static electricity, a spark resulting from a closing door, or a cigarette] in the preceding sentence are incorrect.''

Response: EPA acknowledges Daikin's comment regarding ignition sources for

self-contained HFC–32 AC and HP units referenced in the preamble for the original listing published in SNAP Rule 19. The examples of ignition sources that Daikin cites were appropriate for certain ASHRAE 34 classified A3 hydrocarbon refrigerants in the context of SNAP Rule 19 listings. Given that HFC–32 is classified as an A2L, Daikin is correct that static electricity, a spark resulting from a closing door, or a cigarette are not considered sufficient to be ignition sources for it. HFC–32 and other A2L refrigerants require a higher amount of energy to ignite than A3 refrigerants. Examples of ignition sources with enough energy to ignite an A2L refrigerant, found empirically, are a hot wire at 800 °C or open flames such as from a butane lighter or a lit candle coming into contact directly with a refrigerant leak (Kim and Sunderland, 2018).[39] This experiment also found that many other potential ignition sources are insufficient to ignite HFC–32 and certain other A2L refrigerants, such as cigarettes, electric plug and receptacle, friction sparks, hair dryers, and space heaters. In response to Daikin's comment, EPA has changed the language in the preamble for this final rule from the July 2022 NPRM for HFC–32 in new self-contained room ACs and HPs in section II.D, above, to reflect more appropriate ignition sources for HFC–32. We are now clarifying the characterization of the A2L ignition source that we provided in the preamble for the original listing in SNAP Rule 19 and the NPRM for this final rulemaking. That clarification does not affect EPA's view that the final use conditions for HFC–32 described above are appropriate.

E. Use Conditions and Further Information in Final Listings for Chillers, Residential Dehumidifiers, and HFC–32 in Self-Contained Room ACs and HPs

1. What use conditions is EPA finalizing and why?

As described above, EPA is listing:

- HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in centrifugal and positive displacement chillers for new equipment in comfort cooling applications, including commercial AC and IPAC
- HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C as acceptable, subject to use conditions, for use in residential dehumidifiers for new equipment

In addition, EPA is finalizing revisions to the use conditions that apply to the listing of:

- HFC–32 as acceptable, subject to use conditions, for use in self-contained room ACs and HPs for new equipment

These use conditions are summarized in the listings under subheadings II.A and II.B and the revisions to the use conditions are summarized under subheading II.D, above, and are explained here in greater detail. The use conditions EPA is finalizing (either as new listings or revisions to a previous listing) include conditions requiring use of each refrigerant in new equipment, which can be specifically designed for the refrigerant; use consistent with the UL 60335–2–40 industry standard, 3rd Edition, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers and technicians of potential flammability hazards. The listings with specific use conditions are intended to allow for the use of these lower flammability refrigerants in a manner that will ensure they do not pose a greater overall risk to human health and the environment than other substitutes in these end-uses.

New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is finalizing that these refrigerants may be used only in new equipment which has been designed to address concerns unique to flammable refrigerants—*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment. The information that EPA has considered in our review of flammability risks of this refrigerant in this end-use is based on designing and testing new equipment and not on mitigation methods specific to retrofitting of existing equipment designed for non-flammable refrigerants. Neither the submitters nor public commenters suggested that EPA should consider listing the refrigerants covered by this rule for chillers, dehumidifiers, or self-contained room ACs and HPs for retrofit use. Therefore, EPA is finalizing that they may only be used in new equipment which can be properly designed for their use. This use condition does not affect the ability to service a system using the refrigerant once installed, including the adding of refrigerant or replacing components.

This use condition would not affect the ability to service a system using one of these refrigerants once installed, including the adding of refrigerant or replacing components.

Standards

EPA is finalizing that the flammable refrigerants may be used only in equipment that meets all requirements in UL Standard 60335–2–40, 3rd Edition.

Those participating in the UL 60335–2–40 consensus standards process have tested equipment for flammability risk and evaluated the relevant scientific studies. Further, UL has developed safety standards including requirements for construction and system design, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. Certain aspects of system construction and design, including charge size, ventilation, and installation space, and greater detail on markings, are discussed further below in this section. The UL 60335–2–40 Standard was developed in an open and consensus-based approach, with the assistance of experts in the AC industry as well as experts involved in assessing the safety of products. While similar standards exist from other bodies such as the International Electrotechnical Commission (IEC), we are finalizing to rely on specific UL standards that are most applicable and recognized by the U.S. market. This approach is the same as that in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832; December 20, 2011, 80 FR 19454; April 10, 2015, and 86 FR 24444; May 6, 2021).

A summary of the requirements of UL 60335–2–40 as they affect the refrigerants and end-use addressed in this section of our rule follows. This summary is offered for information only and does not provide a complete review of the requirements in this standard.

Among the provisions in UL 60335–2–40 are limits on the amount of refrigerant allowed in each type of appliance based on several factors explained in that standard. The requirements in UL 60335–2–40 reduce the risk to workers and consumers. Annex GG of the standard provides the charge limits, ventilation requirements and requirements for secondary circuits. The standard specifies requirements for installation space of an appliance (*i.e.,* room floor area) and/or ventilation or other requirements that are determined according to the refrigerant charge used

[39] Dennis Kim and Peter Sunderland, ''Viability of Various Ignition Sources to Ignite A2L Refrigerant Leaks,'' 17th International Refrigeration and Air Conditioning Conference at Purdue University, July, 2018. Available online at: *https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=2885&context=iracc.*

in the appliance, the installation location and the type of ventilation of the location or of the appliance. Within Annex GG, Table GG.1 provides guidance on how to apply the requirements to allow for safe use of flammable refrigerants. UL 60335–2–40, 3rd Edition contains provisions for safety mitigation. These mitigation requirements were developed to ensure the safe use of flammable refrigerants over a range of appliances. In general, as larger charge sizes are used, more stringent mitigation requirements are required by the standard. In certain applications, refrigerant detection systems (as described in Annex LL, *Refrigerant detection systems for A2L refrigerants*) and refrigerant sensors (as described in Annex MM, *Refrigerant sensor location confirmation tests*) such as safety alarms are required by the standard. Where air circulation (*i.e.,* fans) is required in accordance with Annex GG or Annex 101.DVG, it must be initiated by a separate refrigerant detection system either as part of the appliance or installed separately. In a room with no mechanical ventilation, Annex GG provides requirements for openings to rooms based on several factors, including the charge size and the room area. The minimum opening is intended to be sufficient so that natural ventilation would reduce the risk of using a flammable refrigerant. The standard also includes specific requirements covering construction, instruction manuals, allowable charge sizes, mechanical ventilation, safety alarms, and shut off valves for A2L refrigerants.

In addition to Annex GG and Table GG.1 mentioned above, UL 60335–2–40 has a requirement for the maximum charge for an appliance using an A2L refrigerant. Additional requirements exist for charge sizes exceeding three times the LFL.

Table GG.1 of the UL standard indicates that systems with refrigerant charges exceeding certain amounts are outside the scope of the standard, stating that ''National standards apply.'' Specifically, if the refrigeration circuit with the greatest mass of a flammable refrigerant is more than 260 times the lower flammability limit (in kg/m^3), such equipment is outside the scope. For example, HFC–32 has an LFL of approximately 0.307 kg/m^3 (0.0192 lb/ft^3); therefore, equipment with charge sizes of a single circuit exceeding 79.82 kg (176.0 lb) would fall outside the scope of the UL Standard. EPA expects that many chillers could exceed these charge thresholds and therefore is proposing that an additional safety standard would apply for all chillers, as discussed in section II.A.4, above. EPA does not expect this situation to occur for residential dehumidifiers or self-contained room ACs and HPs because of their smaller charge sizes.

EPA recognizes that an updated edition of this standard, Edition 4, was published on December 17, 2022. Nevertheless, EPA is finalizing this rulemaking to the 3rd Edition of this standard because the 4th Edition was not available ahead of the issuance of the proposed rule for the Agency to consider. Therefore, since the 4th Edition was published several months after the proposed rule and after the close of the comment period, EPA could not have reviewed the standard for inclusion in the proposal and there was no opportunity for public comment on whether to incorporate it into the use conditions for these listings. EPA intends to review the 4th edition and if appropriate, EPA will propose to update the use conditions contained in this final rule in a subsequent rulemaking.

Warning Labels

EPA is requiring labeling of chillers and residential dehumidifiers. In addition, EPA is modifying the previously promulgated use conditions for HFC–32 self-contained room ACs and HPs (''equipment'') to update the warning label text. EPA is finalizing that the following labels, or the equivalent, must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent (except for HFC–32 self-contained equipment opting to follow the current use conditions in compliance with UL 484, 8th Edition up to and including its sunset date of January 1st, 2024):

i. On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''

ii. On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used''

iii. On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must Be Followed''

iv. For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations''

1. If the equipment is delivered packaged, this label shall be applied on the packaging
2. If the equipment is not delivered packaged, this label shall be applied on the outside of the appliance

EPA expects that all residential dehumidifiers and all self-contained room ACs and HPs would be packaged, and hence this label would be placed as stipulated in item 1 above. For self-contained room ACs and HPs that are opting to continue being manufactured according to UL 484, 8th Edition, the existing labeling requirements apply until the standard sunsets on January 1, 2024, and are described in the section below. EPA expects that chillers could be provided packaged or not, and this label would be placed as stipulated in item 1 or 2, respectively.

v. On the equipment near the nameplate:

1. At the top of the marking: ''Minimum installation height, X m (W ft).'' This marking is only required if the similar marking is required by the 3rd Edition of UL 60335–2–40. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.
2. Immediately below v.1. above or at the top of the marking if v.1. is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2).'' The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

vi. For non-fixed equipment, including residential dehumidifiers and self-contained room ACs and HPs, on the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.'' EPA expects that this label would be required on residential dehumidifiers, non-residential dehumidifiers, and HFC–32 self-contained room ACs (*e.g.,* including portable ACs, window ACs, PTACs and PTHPs).

vii. For fixed equipment that is ducted, near the nameplate: ''WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be

installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.''

The text of the warning labels, above in i. through iv., vi., and vii., is exactly the same as that required in UL 60335–2–40, while the text of the label identified in v. is similar to that in the UL Standard. The major difference between this rule's warning label requirements and the requirements in Table 101.DVF.1 of UL 60335–2–40 is that the markings for A2L refrigerants, including HFO–1234yf, HFC–32 and the four refrigerant blends, are required to be no less than 3.2 mm (1/8 inch) high in the standard instead of 6.4 mm (1/4 inch) as EPA is finalizing in this action. EPA considers it difficult to see warning labels with the minimum lettering height requirement for A2L refrigerants of 3.2 mm (1/8 inch) in the UL Standard. Therefore, as in the requirements in our previous flammable refrigerants rules (*e.g.,* 76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021), EPA is finalizing that the minimum height for lettering must be 6.4 mm (1/4 inch) as opposed to 3.2 mm (1/8 inch), which will make it easier for technicians, consumers, retail storeowners, first responders, and those disposing the appliance to view the warning labels.

For those manufacturers of new self-contained room ACs and HPs opting to follow the UL 484, 8th Edition standard up to and including its sunset date of January 1st, 2024, EPA is finalizing that the following markings, or the equivalent, must be provided in letters no less than 6.4 mm (1/4 inch) high and must be permanent:

(a) On the outside of the air conditioner: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''

(b) On the outside of the air conditioner: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''

(c) On the inside of the air conditioner near the compressor: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must Be Followed.''

(d) On the outside of each portable air conditioner: ''WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the ''X'' m^2 (Y ft^2).'' The value ''X'' on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484, 8th Edition.

However, after the sunset of UL 484 on January 1st, 2024, the use conditions described above, related to the 3rd edition of UL 60335–2–40, will apply for all self-contained room ACs and HPs under SNAP.

Markings

Our understanding of the UL Standard is that red markings, similar to those EPA has applied as use conditions in past actions for flammable refrigerants (76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021), are required by the UL Standard for A2 and A3 refrigerants but not A2L refrigerants. EPA is finalizing that such markings apply to these A2L refrigerants as well, to establish a common, familiar and standard means of identifying the use of a flammable refrigerant.

These red markings will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The AC and refrigeration industry currently uses red-colored hoses and piping as means for identifying the use of a flammable refrigerant based on previous SNAP listings. Likewise, distinguishing coloring has been used elsewhere to indicate an unusual and potentially dangerous situation, for example in the use of orange-insulated wires in hybrid electric vehicles. Currently under the SNAP listings, as applicable, color-coded hoses or pipes must be used for ethane, HFC–32, R–452B, R–454A, R–454B, R–454C, R–457A, isobutane, propane, and R–441A in certain types of equipment where these are listed acceptable, subject to use conditions. All such tubing must be colored red PMS #185 or RAL 3020 to match the red band displayed on the container of flammable refrigerants AHRI Guideline N, ''2017 Guideline for Assignment of Refrigerant Container Colors.'' The intent of this requirement is to provide adequate notice for technicians and others that a flammable refrigerant is being used within a particular piece of equipment or appliance. Another goal is to provide adequate notification of the presence of flammable refrigerants for personnel disposing of appliances containing flammable refrigerants. As explained in a previous SNAP rule, one mechanism to distinguish hoses and pipes is to add a colored plastic sleeve or cap to the service tube. (80 FR 19465; April 10, 2015). Other methods, such as a red-colored tape could be used. The colored plastic sleeve, cap, or tape would have to be forcibly removed in order to access the service tube and would have to be replaced if removed. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve, cap or tape would be of the same red color (PMS #185 or RAL 3020) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. This could be a cost-effective alternative to painting or dyeing the hose or pipe.

EPA is finalizing the use of color-coded hoses or piping as a way for technicians and others to recognize that a flammable refrigerant is used in the equipment. This would be in addition to the proposed use of warning labels discussed above. EPA considers having two such warning methods to be reasonable and consistent with other general industry practices. This approach is the same as that adopted in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832; December 20, 2011 and 80 FR 19454; April 10, 2015 and 86 FR 24444; May 6, 2021).

2. What additional information is EPA including in these final listings?

For chillers, residential dehumidifiers, and self-contained room ACs and HPs, EPA is including additional information, found in the ''Further Information'' column of the regulatory text at the end of this document, to protect personnel from the risks of using flammable refrigerants. Similar to our previous listings of flammable refrigerants, EPA is including information on the OSHA requirements at 29 CFR part 1910, proper ventilation, personal protective equipment, fire extinguishers, use of spark-proof tools and equipment designed for flammable refrigerants, and training. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes as best practices for safer use.

3. How is EPA responding to comments on use conditions and further information for chillers, residential dehumidifiers, and HFC–32 self-contained room ACs and HPs?

Comment: Several commenters (AHRI, the Alliance for Responsible Atmospheric Policy (the Alliance), Anden, AprilAire, AHAM, ATMOsphere, Carrier Global Corporation, Competition Advocates, Daikin, Diversified CPC International, the Environmental Investigation Agency (EIA), GE Appliances/Haier, LG Electronics U.S.A., Chemours, Trane, UL Solutions) commented in support of incorporating by reference the industry standards UL 60335–2–40 and ASHRAE 15 into the use conditions for chillers, residential dehumidifiers, and self-contained room AC and HPs, but expressed concerns on the Agency's timing of referencing specific editions of these standards.

AHRI, Chemours, and UL stated that a new version of UL 60335–2–40, the 4th edition, may soon be published. Carrier and Daikin recommended using the 4th edition of UL 60335–2–40 instead of the proposed 3rd edition of that standard if the 4th edition is published before EPA issues a final rulemaking. EIA, an environmental group, stated that the 4th Edition of UL 60335–2–40 should be used in the final rule's use conditions if published before EPA takes final action on this rule. Trane recommended delaying approval of SNAP Rule 25 as it relates to chillers, until it can incorporate by reference the 4th Edition of UL 60335–2–40. UL stated that the 4th edition has many improvements over the 3rd edition, including updates requested by the fire service community. Anden and AprilAire both suggested EPA allow for use of the 3rd edition ''in addition to'' the 4th edition, rather than ''in lieu of'' the 4th edition, as EPA proposed. Chemours and Carrier suggested that EPA update previous rules with older editions of standards (*e.g.,* SNAP Rule 23).

Some commenters, such as Daikin and Chemours, noted that the 2022 version of ASHRAE 15 was likely to be published a few months after the NPRM and before the final rule would be issued. UL mentioned the pending publication of ASHRAE 15–2022, in addition to the May of 2022 version of ASHRAE 15.2, a new residential version of the standard. Chemours and Carrier also stated that once the new versions of the UL 60335–2–40 and ASHRAE 15 standards are published, the use conditions of the proposed rule should be updated.

AHRI stated that it will be important to have a pathway to compliance as each new edition becomes available. LG Electronics and AHAM stated that NRTLs do not have a required date to comply with the 3rd edition and expressed concern that this will cause issues in obtaining proper testing for the products. AHAM commented, particularly with respect to the use of HFC–32 in self-contained room ACs and HPs, that the Agency must allow for transition periods within the rule so that manufactured products can comply with relevant safety standards. The Alliance commented on their support for dealing with codes and standards issues raised by AHAM and AHRI. They noted this is a critical issue and has been a critical issue for several years now, but that integration of the codes and standards will allow transition schedules for alternatives. Competition Advocates ''encourage[d] EPA to revise its proposed SNAP Rule 25 use conditions to allow for an extended implementation time.'' Trane commented that there should be an expedited process for updating the linked standards to allow for ease of compliance and ensure the availability of the latest technologies.

GE Appliances noted support for SNAP Rule 25 and urged EPA to move quickly in finalizing. AHAM urged the Agency to ''expedite finalizing this rule,'' referencing regulations in California limiting refrigerant options in dehumidifiers as of the start of 2023.

Response: EPA thanks the commenters for their support of including ASHRAE 15 and UL 60335–2–40 standards in the use conditions for chillers, residential dehumidifiers, and self-contained ACs and HPs in SNAP Rule 25. EPA acknowledges the information on further developments in the UL 60335–2–40 standard and ASHRAE standards processes and realizes that new editions of both standards have been published since the issuance of the proposed rule and after the close of the comment period. After considering all the public comments on this proposal, we are finalizing the editions of relevant standards required by the use conditions for chillers, dehumidifiers, and self-contained ACs and HPs as proposed. EPA is incorporating by reference the 3rd edition of UL 60335–2–40 and the 2019 edition of ASHRAE 15. The 3rd edition of UL 60335–2–40 includes extensive revisions specifically to address flammability risks of A2L refrigerants and reach industry-wide consensus. We conclude that the 3rd edition adequately addresses the use of these A2L refrigerants in the equipment proposed and as discussed below, if the Agency determines changes are warranted, the Agency can do so in a future rulemaking.

EPA is aware of the new 4th edition of UL 60335–2–40 and the ASHRAE 15–2022 standards that have recently been published. However, these editions were not available in advance of the development of the proposed rule and thus were not considered. In addition, the public did not have the opportunity to review and comment on a proposed rule that reflected those new editions. EPA recognizes that the UL standards are under continuous maintenance—as are ASHRAE Standards 15 and 15.2—and hence may change again, even though the mentioned editions are newly published. Past experience suggests it is difficult to align the regulatory development process with these standard-setting processes. EPA concluded that rather than wait for the issuance of a new edition (which could be replaced with a subsequent edition), it was important for EPA to act on the SNAP submissions and propose listings based on the best available information, which included the available editions of the relevant UL and ASHRAE standards. Furthermore, now that a 4th edition of the UL Standard and the 2022 version of ASHRAE 15 are released, EPA will review the relevant changes and may develop a subsequent rulemaking, allowing for a notice and comment period for the public to provide their opinions on the updates.

Some commenters supported moving forward with the rule using the 3rd edition of UL 60335–2–40 consistent with EPA's proposal. EPA concludes that reliance on the 3rd edition of the UL Standard, the 2019 version of ASHRAE 15, and other use conditions allows applicable products to be used safely. Given the comments received expressing desire for quick finalization of the rule, EPA's understanding that the 3rd edition provides many desired improvements on the 2nd edition, and environmental benefits to providing these ODS alternatives as quickly as possible, EPA is finalizing to the 3rd edition of UL 60335–2–40.

Regarding Trane's comment requesting an expedited updating process for standards, EPA does not have an automatic process or a process with fewer steps, as each particular iteration of a standard must be reviewed by the Agency. Additionally, updating the standard involves a change to regulations, and the Agency typically uses a notice-and-comment process to change the standard that is incorporated into regulations. In response to comments from Chemours and Carrier

that EPA should also update previous rules with older editions of standards, EPA notes that this is outside the scope of this rulemaking. EPA will continue to consider changes to relevant standards, both for this rule and for previous rules addressing flammable refrigerants, and the Agency may consider whether any revisions to the SNAP program regulations should be proposed at a future date.

Comment: Several commenters noted concerns regarding the proposed use conditions (AHRI, the Alliance, Anden, AprilAire, Competition Advocates, Daikin, Diversified CPC International). Anden commented on EPA's proposed use condition requiring ''marked service ports, pipes, hoses, and other devices through which the refrigerant is serviced'' and requested ''EPA to clarify in the final rule that this particular use condition does not apply to equipment that does not have service ports.'' Similar to Anden, AprilAire commented on ''marked service ports'' and requested ''EPA to clarify in the final rule that this particular use condition does not apply to equipment that does not have service ports.'' AprilAire noted that their products generally do not contain service ports.

Daikin noted that ''EPA inaccurately characterized the operation of chillers in its general description of warning label use conditions ''vii. For fixed equipment that is ducted, including chillers. . . .'' 87 F.R. at 45523 (emphasis added).''

Diversified CPC International, a producer of specialty gases, including hydrocarbon refrigerants, commented on the use of hydrocarbon refrigerants and noted it has ''been limited within the United States due to refrigerant charge limitations that are much lower than most regions in the world. For example, the IEC Standard IEC 60335–2–40 allows for 1,000 grams charge size for indoor air conditioning units and a 5 kg limit for outdoor air conditioning units.'' They stated that EPA should consider modifying use conditions to allow compliance for larger A3 charge sizes for various types of equipment that falls under the scope of UL 60335–2–40, 3rd Edition and UL 60335–2–89, 2nd Edition. ATMOsphere, a trade group, stated that the next step for revising North American safety standards will be to form a CANENA Technical Harmonization Committee (THC) to discuss possibly adopting changes from the 7th and most recent edition of the IEC into a future edition 5 of UL 60335–2–40, with larger charge sizes for hydrocarbons.

Response: The Agency acknowledges support for the proposed listings covered by the use conditions in this section of the preamble. After considering all the public comments on the proposal, we are finalizing these use conditions, with modifications in response to the comments received. A few commenters requested clarification on use conditions requiring ''marked service ports, pipes, hoses, and other devices through which the refrigerant is serviced.'' EPA considers the marked service port use condition to apply to equipment without service ports, as servicing or recovery occurs through their pipes, hoses, or other devices. Technicians will still need information provided by the service port markings in these circumstances. After considering all the public comments on this proposal, we are finalizing this use condition as proposed.

EPA agrees with comments provided by Daikin indicating that EPA may have inadvertently mischaracterized the operation of chillers in its general description of warning label use conditions. In response to this comment, EPA has edited the warning label description for fixed equipment to keep the reference to ducted equipment and to remove the reference to chillers.

EPA is aware of the larger charge sizes for hydrocarbon refrigerants allowed in updated versions of UL standards, such as UL 60335–2–89, 2nd Edition and UL 60335–2–40, 3rd Edition. EPA did not propose to increase the charge sizes of A3 refrigerants, thus this request is beyond the scope of this rulemaking. Additionally, EPA did not consider equipment covered by the UL 60335–2–89 standard in this rulemaking. Any changes to use conditions for listings not included in the proposal are beyond the scope of this final rule, and if EPA concludes that proposing changes to the listings is warranted, it would typically initiate a separate rulemaking process. The Agency is familiar with the process of forming a CANENA THC to discuss proposals for adopting the changes in IEC 60335–2–40 Edition 7 into the next edition of the North American safety standards, including the 5th edition of UL 60335–2–40. If a 5th edition of UL 60335–2–40 is released, EPA can consider any relevant changes such as allowing for larger charge sizes for hydrocarbon refrigerants in a future rulemaking.

F. Very Low Temperature Refrigeration (VLTR)—Listing of R–1150 as Acceptable, Subject to Use Conditions and Narrowed use limits, for Use in New VLTR

In the NPRM, EPA proposed to list R–1150 as acceptable, subject to use conditions and narrowed use limits, for use in new VLTR equipment. No comments were received in regard to this listing. Therefore, EPA is finalizing the listing of R–1150 in VLTR as proposed.

1. Background on VLTR

The very low temperature refrigeration (VLTR) end-use includes a wide range of equipment types. VLTR equipment is intended to maintain temperatures considerably lower than for refrigeration of food (below −62 °C or −80 °F). Examples of very low temperature refrigeration equipment include medical freezers and freeze-dryers, which generally require extremely reliable refrigeration cycles to maintain low temperatures and must meet stringent technical standards. In some cases, VLTR equipment may use a refrigeration system with two stages, each with its own refrigerant loop. This allows a greater range of temperatures and may reduce the overall refrigerant charge.

For this rulemaking, only equipment designed to reach temperatures lower than −80 °C (−112 °F) is addressed. See sections II.E.6 and II.E.7 below for a discussion of the narrowed use limits describing the reasoning for this temperature requirement. Examples of equipment covered by this final rule in the VLTR end-use include:

- Freeze dryers. This equipment typically includes a two-stage system, with a VLTR stage being addressed by this rule and a warmer stage, usually classified as IPR, not addressed in this final rule. The primary application of this equipment is for freeze drying material in a laboratory setting.
- Cold traps required to operate below −80 °C or −112 °F. This equipment is used during laboratory evaporation to condense vapors to prevent them from entering and damaging the pump, or leaking into the environment, ensuring a closed system within the vacuum pump.

- Very low temperature freezers designed to reach temperatures below −80 °C or −112 °F.

This final listing decision for R–1150 addresses these types of equipment, as well as other types of VLTR equipment not mentioned that fit within the narrowed use limits described in section II.F.6, under SNAP. This listing addresses all types of VLTR equipment that meet the requirements of the UL Standard 61010–2–011, 2nd Edition, and for all applications of such equipment under EPA's final use conditions and narrowed use limits. Because UL Standard 61010–2–011 only applies to laboratory equipment, we understand that only VLTR equipment that is also laboratory equipment is eligible to use R–1150 under the use condition.

2. What is EPA's final listing decision for R–1150?

EPA is listing R–1150 as acceptable, subject to use conditions and narrowed use limits, for use in VLTR equipment, including freeze-dryers, cold traps, and very low temperature freezers.

3. What is R–1150 and how does it compare to other refrigerants in the same end-use?

R–1150, also known as ethene or ethylene (CAS Reg. No. 75–85–1), is an unsaturated hydrocarbon. It is a flammable refrigerant with the ASHRAE safety classification A3. You may find a copy of the applicants' submissions, with CBI redacted, providing the required health and environmental information for this substitute in this end-use in Docket EPA–HQ–OAR–2021–0836 at *https://www.regulations.gov* under the names ''Supporting Materials for Rule 25 Listing of R–1150 in Refrigeration and Air Conditioning. SNAP Submission Received December 3, 2018'' and ''Supporting Materials for Rule 25 Listing of R–1150 in Refrigeration and Air Conditioning. SNAP Submission Received January 21, 2021.'' EPA performed an assessment to examine the health and environmental risks of this substitute. This assessment is available in Docket EPA–HQ–OAR–2021–0836: ''Risk Screen on Substitutes in Very Low Temperature Refrigeration (New Equipment). Substitute: R–1150.'' [40]

Environmental information: R–1150 has an ODP of zero and a GWP of four.

In addition to ODP and GWP, EPA evaluated potential impacts of R–1150 and other hydrocarbon refrigerants on local air quality. R–1150 is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS. As described below, EPA estimates that potential emissions of R–1150, when used in the refrigeration and AC sector in the VLTR end-use consistent with this listing under the SNAP program, would not have a significant impact on local air quality.[41] [42]

In response to the increased market share of hydrocarbon refrigerants, particularly in VLTR applications, EPA conducted additional analysis of various scenarios to consider the potential impacts on local air quality if hydrocarbon refrigerants were used in further applications.[43] In particular, use of R–1150 in very low temperature freezers, including VLTR equipment with an IPR stage using propylene, and the use of R–1150 in retail food refrigeration systems [44] were investigated for ground-level ozone effects. The analysis first considers highly conservative modeling scenarios where a specific hydrocarbon would be used widely across all end-uses in the refrigeration and AC sector. Scenario 1b** estimates propylene's emissions using EPA's Vintaging Model (VM) and Community Multi-stage Air Quality (CMAQ) model,[45] and Scenario 1b estimates R–1150's emissions using the same VM and CMAQ versions as in Scenario 1b**.

Additionally, the analysis also considers the more realistic scenarios (Scenario 2, Scenario 3a, and Scenario 3b) where hydrocarbons are modeled only in the end-uses where the SNAP program has already listed them as acceptable, or for which SNAP submissions or international market trends indicate HCs soon could be used. Scenario 2 examines the likely emissions of lower maximum incremental reactivity (MIR) hydrocarbons, propane, isobutane, and ethane, in the residential and light commercial AC, residential dehumidifiers, retail refrigeration, and household refrigeration end-uses. Scenarios 3a and 3b also consider the use of higher MIR refrigerants propylene and R–1150 in laboratory equipment (IPR and VLTR end-uses, respectively) and R–1150 in small retail food refrigeration equipment (*e.g.,* stand-alone units) in addition to the hydrocarbon refrigerants used in Scenario 2. Scenarios 3a and 3b differentiate based on whether propylene and R–1150 would be subject to the venting prohibition under CAA section 608(c)(2). For further information on the specific assumptions, see the docket for this rulemaking.[46]

In highly conservative Scenario 1b, examining widespread R–1150 adoption across the entire refrigeration and AC sector, modeling predicts that the single 8-hour average ground-level ozone concentration could increase by 11.7 percent in Los Angeles, which is the area with the highest level of ground-level ozone pollution in the United States. However, the assumptions modeled in 1b are highly unrealistic, given the significantly smaller number of applications in which R–1150 has been requested for use or is currently being used globally. VLTR, the only end-use being addressed in this listing, represents a very small segment of the refrigeration and AC sector.

In the more realistic scenarios 3a and 3b, where use of propylene and R–1150 in laboratory equipment and R–1150 in small retail food refrigeration equipment are included, the 8-hour ground-level ozone concentration in Los Angeles was found to increase by a maximum of 0.017 percent relative to the NAAQS on the worst modeled day. For purposes of this SNAP determination, this is not a significant increase in ground-level ozone. The modeling is also conservative by assuming a one-for-one substitution of hydrocarbons for current refrigerants because an actual transition would likely introduce less than one kilogram of hydrocarbon for each kilogram replaced. As a result of this analysis, EPA determined that the use of R–1150 consistent with the use conditions and narrowed use limits finalized in this rulemaking will not result in significantly greater risk to people's health or the environment than other alternatives available for the same use.

Ecosystem effects from R–1150 are expected to be small, as compared to the effects of other acceptable substitutes in

[40] ICF, 2022o. Risk Screen on Substitutes in Very Low Temperature Refrigeration (New Equipment); Substitute: R–1150.

[41] ICF, 2014. Assessment of the Potential Impact of Hyddrocarbon Refrigerants on Ground Level Ozone Concentrations. February 2014.

[42] ICF, 2022p. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May 2020.

[43] Ibid.

[44] EPA is aware that such refrigeration equipment exists in Europe. Thus, EPA evaluated R–1150 in retail food refrigeration—stand-alone units as well as in VLTR and other hydrocarbon refrigerants, to consider the greatest impact that reasonably could occur when using increasing amounts of such refrigerants.

[45] VM IO file_v5.1_10.01.19 and CMAQ 5.2.1 with carbon bond 06 (CB06) mechanism, as cited in ICF, 2022p. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May 2020.

[46] ICF, 2014. Op. cit.

this end-use. R–1150 is highly volatile and typically evaporates or partitions to air, rather than contaminating ground or surface waters, and thus R–1150's effects on aquatic life are expected to be small. Based on these considerations, R–1150 is not expected to pose a greater risk of ecosystem effects than other alternatives for these uses.

Flammability information: ASHRAE Standard 34 classifies R–1150 as a Class A3 refrigerant.[47] R–1150 is flammable when its concentration in the air is in the range of 2.7 percent to 36 percent by volume (27,000 ppm to 360,000 ppm).[48 49]

Toxicity and exposure data: Exposure to R–1150 may be hazardous if inhalation, skin contact, or eye contact with the proposed substitute occurs at sufficiently high levels. The most likely pathway of exposure is through inhalation, which can cause symptoms of asphyxiation. Exposures of R–1150 to the skin may cause frostbite. Exposures of R–1150 to the eyes could cause eye irritation. These potential health effects are common to many refrigerants.

The American Conference of Governmental Industrial Hygienists (ACGIH) has established a TLV of 200 ppm as an 8-hour TWA for R–1150. EPA anticipates that users will be able to meet the TLV and address potential health risks by following the use condition limiting charge sizes to 150 g and the requirements and recommendations in the manufacturer's SDS, ASHRAE Standard 15, UL Standard 61010–2–011, 2nd Edition, and other safety precautions common to the refrigeration and AC industry.[50 51]

Comparison to other substitutes in this end-use: R–1150 has an ODP of zero, comparable to or less than other listed substitutes in this end-use with ODPs ranging from zero to 0.098. For new VLTR equipment, R–1150's GWP of four is comparable to that of other acceptable substitutes such as ethane and CO_2, with respective GWPs of 5.5 and one, and lower than other acceptable substitutes such as R–410A, R–507A, and HFC–23 with respective GWPs of 1,890, 3,990, and 14,800.

R–1150 is a VOC that is more photochemically reactive and more likely to cause ground-level ozone pollution than acceptable refrigerants in this end-use. For example, R–1150 has a MIR of 9.07 g-O_3/g-substance, which is higher than propane's MIR of 0.56 g-O_3/g-substance or ethane's MIR of 0.28 g-O_3/g-substance.[52] EPA addresses this potential risk through a narrowed use limit, restricting use of this refrigerant to VLTR equipment designed to reach temperatures lower than −80 °C (−112 °F). See section II.F.6 below for a discussion of the finalized narrowed use limits.

Flammability risks of R–1150 are comparable to flammability risks of other available substitutes in the same end-use, such as ethane, while R–1150's flammability risks are higher than those of nonflammable refrigerants such as R–410A, CO_2, or HFC–23. Flammability risks can be addressed by following the finalized use conditions, such as use only in new equipment that is designed and tested to meet the UL Standard 61010–2–011. See section II.F.4 below for a discussion of the use conditions.

Toxicity risks are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks can be minimized by use consistent with the TLV issued by the ACGIH, ASHRAE Standard 15, UL 61010–2–011—which applies under the final use conditions—and other industry standards, recommendations in the manufacturer's SDS, and other safety precautions common in the refrigeration and AC industry.

Although R–1150 presents a higher risk to local air quality than other available alternatives for this end-use, other alternatives such as ethane, propane, and most HFOs or HFCs, that are less photochemically reactive than R–1150 are not able to attain temperatures as low as those attainable by R–1150 because of their higher boiling points. Thus, EPA is finalizing listing this substitute as acceptable subject to use conditions and narrowed use limits in VLTR.

4. What use conditions is EPA finalizing?

(1) EPA is finalizing the following use conditions to address flammability risks of R–1150: New equipment only—R–1150 may be used only in new equipment designed specifically and clearly identified for the refrigerant, *i.e.,* the substitute shall not be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) UL Standard—R–1150 may be used only in laboratory equipment that meet all requirements listed in the 2nd edition, dated May 13th, 2021, of UL Standard 61010–2–011, ''Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 011: Particular Requirements for Refrigerating Equipment.'' In cases where this final rule includes requirements different than those of UL 61010–2–011, 2nd Edition, EPA is requiring that the equipment meet the requirements of this final rule in place of the requirements in the UL Standard. Requirements of note include:

• Warning labels—The following markings, or the equivalent, must be provided in letters no less than 6.4 millimeter (¼ inch) high and must be permanent:

i. Attach near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''

ii. Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must Be Followed.''

iii. Attach on the exterior of the refrigeration equipment: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''

iv. Attach near all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.''

v. Attach on the exterior of the refrigeration equipment: ''This equipment is intended for use in commercial, industrial, or institutional occupancies as defined in the Safety Standard for Refrigeration Systems, ANSI/ASHRAE 15.''

vi. Attach on the exterior of the shipping carton: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations.''

vii. The instructions shall include the following warnings as necessary:

a. ''WARNING: Ensure all ventilation openings are not obstructed.''

b. ''WARNING: Do not use mechanical devices or other means to accelerate the defrosting process, other than those recommended by the manufacturer.''

c. ''WARNING: Do not damage the refrigerant circuit.''

[47] ASHRAE, 2019a. Op. cit.

[48] Ibid.

[49] ICF, 2022o. Op. cit.

[50] ASHRAE, 2019b.

[51] ICF, 2022o. Op. cit.

[52] In addition to being an acceptable refrigerant in very low temperature refrigeration, ethane's MIR is one threshold that EPA considers in deciding whether a compound makes a negligible contribution to tropospheric ozone formation and should be excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS.

• Markings—Equipment must have distinguishing red (PMS #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The laboratory equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25 mm) from the servicing port and shall be replaced if removed.

(3) Charge size—Equipment must use no more than 150 g of R–1150 in each refrigerant circuit using this refrigerant.

EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerant that are not included in the information listed in the tables included in the regulatory text (*e.g.,* the CAA section 608(c)(2) venting prohibition,[4] or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from VLTR appliances are likely to be hazardous waste under RCRA (see 40 CFR parts 260–270).

5. Why is EPA finalizing these specific use conditions?

EPA is finalizing listing R–1150 as acceptable, subject to use conditions, for use in the VLTR end-use for new equipment reaching temperatures lower than −80 °C (−112 °F). The use conditions are identified in the listing under subheading II.F.4, above, and are explained here in greater detail. The use conditions EPA is finalizing include conditions requiring use of R–1150 in new equipment, which can be specifically designed for the refrigerant; use consistent with UL 61010–2–011, 2nd Edition, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and limiting charge size to 150 g of R–1150 per refrigerant circuit. The finalization of these use conditions is intended to allow for the use of R–1150, a flammable refrigerant, in a manner that will ensure it does not pose a greater overall risk to human health and the environment than other substitutes in this end-use.

New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is finalizing that R–1150 may be used only in new equipment[53] which has been designed to address concerns unique to flammable refrigerants—*i.e.,* this substitute may not be used as a conversion or ''retrofit'' refrigerant for existing equipment. The information that EPA has considered in our review of flammability risks of this refrigerant in this end-use is based on designing and testing new equipment, and not on mitigation methods specific to retrofitting of existing equipment designed for non-flammable refrigerants. Neither the submitters nor public commenters suggests that EPA should consider listing R–1150 for retrofit use. Therefore, EPA is finalizing that R–1150 can only be used in new equipment properly designed for its use. This requirement does not affect the ability to service equipment using R–1150 once installed, including the adding of refrigerant or replacing components.

Standards

EPA is finalizing that R–1150 may be used only in equipment that meets all requirements in UL 61010–2–011, 2nd Edition. This UL standard indicates that refrigerant charges greater than 150 g are beyond its scope and that additional requirements apply, such as for instance ASHRAE 15–2019. EPA has only evaluated equipment that fits within the scope of UL 61010–2–011.

UL has developed safety standards including requirements for construction and system design, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. Certain aspects of system construction and design, including charge size, ventilation, and installation space, and greater detail on markings, are discussed further below in this section. The UL Standard was developed in an open and consensus-based approach, with the assistance of experts in the laboratory equipment industry as well as experts involved in assessing the safety of products. While similar standards exist from other bodies such as the IEC, we are finalizing to rely on a specific UL standard that is most applicable and recognized by the U.S. market. This approach is the same as that in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021).

A summary of the requirements of UL 61010–2–011, 2nd Edition as they affect R–1150 and the end-use addressed in this section of the rule follows. This summary is offered for information only and does not provide a complete review of the requirements in this standard. UL 61010–2–011, 2nd Edition requires the warning labels on the equipment to contain letters at least ¼ inch high. The label must be permanently affixed to the equipment. Warning label language requirements are described in section II.F.4 of this proposed rule. Additionally, red markings, similar to those EPA has applied as use conditions in past actions for flammable refrigerants (76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021), are required by UL 61010–2–011, 2nd Edition for A2 and A3 refrigerants to establish a common, familiar and standard means of identifying the use of a flammable refrigerant.

These red markings will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The colored plastic sleeve or cap would have to be forcibly removed in order to access the service port, hose, or pipe. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve would be of the same red color (PMS #185 or RAL 3020) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. The use of a colored plastic sleeve or cap that is boldly marked with a graphic could be a cost-effective alternative to painting or dyeing the service port, hose, or pipe.

Charge Size Limitation

Among the provisions in UL 61010–2–011, 2nd Edition are limits on the amount of refrigerant allowed in each appliance. The limitations on refrigerant charge size for VLTR are consistent with UL 61010–2–011, 2nd Edition to reduce the risk to workers and consumers. EPA is requiring a charge size limit of 150 g for each refrigerant circuit or stage for the proposed refrigerant. Section 1.1.1 of the UL Standard states, ''This document details all the requirements when up to 150 g of FLAMMABLE REFRIGERANT are used per stage of a REFRIGERATING SYSTEM. Additional requirements beyond the current scope of this document apply if a REFRIGERANT charge of FLAMMABLE REFRIGERANT exceeds this amount.'' Thus, in order to ensure the standard's provisions apply and sufficiently address flammability risk, EPA is requiring that each refrigerant circuit must contain no more than 150 g of R–1150.

In addition to the general requirement that each refrigerant circuit must contain no more than 150 g of R–1150,

[53] This is intended to mean a completely new refrigeration circuit containing a new compressor, evaporator, and condenser.

UL 61010–2–011, 2nd Edition has a requirement for the maximum charge for remote condensing unit using a flammable refrigerant in Annex DD and Table DD.1. Section DD.2.4 of Annex DD sets requirements for the minimum associated room area for a given charge, based on a maximum refrigerant concentration of 0.38 lb/1000 ft^3, 5200 ppm, or 6 g/m^3 for R–1150.

6. What narrowed use limits is EPA finalizing?

EPA is finalizing the following narrowed use limits for use of R–1150 in VLTR:

(1) Temperature range—R–1150 may only be used in equipment designed specifically to reach temperatures lower than −80 °C (−112 °F).

(2) The manufacturers of new very low temperature equipment must demonstrate that other alternatives are not technically feasible. They must document the results of their evaluation that showed the other alternatives to be not technically feasible and maintain that documentation in their files. This documentation, which does not need to be submitted to EPA unless requested to demonstrate compliance, ''shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes.'' (40 CFR 82.180(b)(3)).

7. Why is EPA finalizing these specific narrowed use limits?

The boiling point (b.p.) of a refrigerant determines the coldest temperature it can reach within its refrigerating capabilities. R–1150 has a b.p. of −104 °C, allowing it to refrigerate as cold as −104 °C. There are a limited number of refrigerants that are capable of reaching temperatures below −80 °C, such as the ODSs CFC–13 (b.p., −81.4 °C) and R–503 (b.p., −88.9 °C), and among the acceptable refrigerants in this end-use, ethane (b.p., −88.3 °C) and the high GWP refrigerants HFC–23 (b.p., −84.4 °C), R–508A (b.p., −87.4 °C) and R–508B (b.p., −87.4 °C).[54] Given the limited refrigerant options available for equipment designed to reach the sub −80 °C temperature range, EPA understands there is a need for listing R–1150. However, EPA believes that limiting the use of R–1150 to VLTR equipment designed to reach temperatures lower than −80 °C (−112 °F) is necessary to mitigate local air quality concerns discussed in section II.F.3 that could occur with broad use, given the reactivity of VOC and its potential to contribute to ground-level ozone in areas like Los Angeles. If R–1150 were used without limitation across the refrigeration and AC sector, it could have significant impacts on local air quality. For equipment in this end-use designed to reach temperatures higher than −80 °C (−112 °F), other alternatives with lower reactivities are widely available, *e.g.,* CO_2, ethane, propane, and R–410A. There are sufficient refrigerant options available to fill the need in VLTR equipment designed to reach temperatures higher than −80 °C (−112 °F) without allowing the use of refrigerants as photochemically reactive as R–1150. By including narrowed use limits, EPA is only allowing the use of R–1150, a refrigerant with higher reactivity, when it is the only technically feasible option available.

8. What additional information is EPA including in this final listing?

EPA is providing additional information related to this listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.E.2 above for further discussion on what additional information EPA is including in this final listing. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes as best practices for safer use.

9. How is EPA responding to comments on VLTR?

No comments were received relating to the proposed listing of R–1150 in VLTR. For the reasons explained above, EPA is finalizing this section of the rule as proposed.

G. Streaming and Total Flooding Fire Suppression—Listing of 2-bromo-3,3,3 trifluoropropene (2–BTP) as Acceptable, Subject to Use Conditions, as a Streaming Agent in Non-Residential Applications and as a Total Flooding Agent in Normally Unoccupied Spaces Under 500 ft³

1. Background on Streaming and Total Flooding Fire Suppression

The fire suppression and explosion protection end-uses addressed in this action are total flooding and streaming. Total flooding systems, which historically employed halon 1301 as a fire suppression agent, are used in both normally occupied and unoccupied areas. In the United States, approximately 90 percent of installed total flooding systems protect anticipated hazards from ordinary combustibles (*i.e.,* Class A fires), while the remaining ten percent protect against applications involving flammable liquids and gases (*i.e.,* Class B fires).[55] It is also estimated that approximately 75 percent of total flooding systems protect electronics (*e.g.,* computers, telecommunications, process control areas), while the remaining 25 percent protect other applications, primarily in civil aviation (*e.g.,* engine nacelles/auxiliary power units, cargo compartments, lavatory trash receptacles), military weapons systems (*e.g.,* combat vehicles, machinery spaces on ships, aircraft engines and tanks), oil/gas and manufacturing industries (*e.g.,* gas/oil pumping, compressor stations), and maritime (*e.g.,* machinery space, cargo pump rooms). Streaming applications, which have historically used halon 1211 as an extinguishing agent, include portable fire extinguishers designed to protect against specific hazards.

2. What is EPA's final listing decision for 2–BTP?

As proposed, EPA is finalizing listing 2–BTP as acceptable, subject to use conditions. The use conditions are for use in normally unoccupied spaces under 500 ft^3 in total flooding fire suppression systems, and as a streaming agent for use in non-residential applications, except for commercial home office and personal watercraft. EPA received one comment on the proposed listing of 2–BTP, and the commenter supported finalizing the rule as proposed. 2–BTP was previously listed as acceptable, subject to use conditions, for use in engine nacelles and auxiliary power units on aircraft in total flooding fire suppression systems and for use in aircraft as a streaming agent (81 FR 86778, December 1, 2016).

The redacted submission and supporting documentation for 2–BTP are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed assessments to examine the health and environmental risks of this substitute during equipment production operations and the filling of

[54] Engineering ToolBox, 2005. *Refrigerants—Physical Properties.* Available online at: *https://www.engineeringtoolbox.com/refrigerants-d_902.html* Accessed October 28, 2021.

[55] Wickham, 2002. Status of Industry Efforts to Replace Halon Fire Extinguishing Agents. March 2002.

fire extinguishers as well as in the case of an inadvertent discharge of the system during maintenance activities on the fire extinguishing system. These assessments are available in the docket for this rule.[56 57]

3. What is 2–BTP and how does it compare to other fire suppressants in the same end-uses?

a. Total Flooding

Environmental information: 2–BTP has an ODP of 0.0028 [58 59 60] and a GWP of 0.23–0.26.[61] 2–BTP is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: 2–BTP is non-flammable.

Toxicity and exposure data: EPA assessed potential health risks from exposure to the proposed substitute as a total flooding agent in normally unoccupied spaces up to 14.2 m^3 (500 ft^3) during manufacture, installation, and servicing of 2–BTP total flooding systems, consistent with the use description provided by the submitter. According to the SDS, exposure to 2–BTP following a discharge may be hazardous if inhalation, skin contact, or eye contact with the proposed substitute occurs at sufficiently high levels. However, the most likely pathway of exposure is through inhalation, which may cause central nervous system effects, such as dizziness, confusion, physical incoordination, drowsiness, anesthesia, or unconsciousness. The cardiotoxic Lowest Observed Adverse Effect Level (LOAEL) for this agent is 1.0 percent (10,000 ppm), at which level exposure may cause increased sensitivity of the heart to adrenaline, which might cause irregular heartbeats and possibly ventricular fibrillation or death.

2–BTP vapors may reduce oxygen available for breathing, causing asphyxiation in high concentrations. Such vapors pose a potential hazard if large volumes are trapped in enclosed or low places. In addition, as noted above, if person(s) are exposed to high concentrations, the person(s) may experience central nervous system effects, such as drowsiness and dizziness, which may result in the person(s) not realizing that he/she is suffocating. These health effects after exposure are similar for other common fire suppressants.

To assess potential health risks from exposure to the proposed substitute for personnel during manufacturing, EPA developed an AEL of 2 ppm for 2–BTP based on review of available toxicity studies.[62] The AEL represents the maximum 8-hour TWA at which personnel in an occupational environment can be exposed regularly without adverse effects. The estimated exposure values provided by the submitter are greater than the occupational AEL. To effectively mitigate potential occupational exposure and maintain average exposure levels below the occupational AEL of 2 ppm, the manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation. The sampling data provided by the submitter demonstrate that local exhaust ventilation greatly reduces exposure concentration inside the fill booth and in the filling area.

Exposure to the substitute is not likely during installation or servicing of 2–BTP total flooding systems for normally unoccupied spaces. The risk of accidental activation of the fire extinguishing system while personnel are present near the protected space is highly unlikely if proper procedures are followed. Proper instructions on system installation and servicing included in manuals for the 2–BTP systems should be adhered to. In the case of accidental release, engineering controls in accordance with the National Fire Protection Association (NFPA) 2001 Standard on Clean Agent Fire Extinguishing Systems to limit personnel exposure to discharges should be employed with 2–BTP systems.

EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. EPA recommends that a discharge time delay of 30 to 60 seconds is programmed in accordance with the NFPA 2001 standard. Although exposure is highly unlikely during installation and maintenance activities, exposure is possible upon reentry into a space after a system has been discharged. In the event of an accidental release, the space should be adequately ventilated. EPA recommends that personnel wear protective clothing, goggles, gloves, and particulate-removing respirators with National Institute for Occupational Safety and Health (NIOSH) type N95 or better filters while performing installation or maintenance, and a self-contained breathing apparatus (SCBA) while performing clean-up activities to reduce the risk of exposure. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute as best practices for safer use.

2–BTP is not expected to cause a significant risk to human health in the general population when used in total flooding systems in normally unoccupied areas. The use in spaces under 500 ft^3 requires a smaller amount of fire suppressant, reducing potential exposures to workers and the general public and reducing potential toxicity risks. Disposal of 2–BTP total flooding systems is subject to local, State, and Federal regulations, which ensure that 2–BTP and water contaminated with 2–BTP are not to be dumped into sewers, on the ground, or into any body of water, but rather taken to a wastewater treatment facility or disposed of properly. 2–BTP is not considered to be hazardous waste under EPA regulations implementing RCRA at 40 CFR part 261.

Comparison to other fire suppressants: 2–BTP has an ODP of 0.0028, comparable to or lower than other acceptable substitutes in this end-use, with ODPs ranging from zero to 0.048. 2–BTP has a GWP of 0.23–0.26 that is lower than or comparable to that of other acceptable substitutes for total flooding agents, with GWPs that range from about zero to 22,800.[63] 2–BTP is

[56] ICF, 2022q. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[57] ICF, 2022r. Risk Screen on Substitutes as Streaming Agents in Non-Residential Applications. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[58] Patten, et al., 2011. OH, reaction rate constant, IR absorption spectrum, ozone depletion potentials and global warming potentials of 2-bromo-3,3,3-trifluoropropene, J. Geophys. Res., 116 (D24), D24307, doi: 10.1029/2011JD016518, 2011.

[59] Orkin, V. L. 2004. Photochemical Properties of 2-bromo-3,3,3-trifluoropropene and semi-empirical kinetic estimates of its Global Impacts on the Atmosphere. Prepared by the National Institute of Standards and Technology Physical and Chemical Properties Division for American Pacific Corporation. July 2004.

[60] The ODP in this rulemaking remains as it was originally listed by SNAP (see 81 FR 86778).

[61] Patten et al., 2012. Correction to ''OH reaction rate constant, IR absorption spectrum, ozone depletion potentials and global warming potentials of 2-bromo-3,3,3-trifluoropropene,'' J. Geophys. Res., 117, D22301, doi:10.1029/2012JD019051.

[62] ICF, 2022r. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[63] For SF_6, the substitute with the highest GWP, the SNAP listing finds SF_6 as ''acceptable subject to narrowed use limits.''

considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS. Other acceptable fire suppression agents currently in use in this end-use are also VOC (*e.g.,* C_6-perfluoroketone), and 2–BTP is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Emissions of 2–BTP should be controlled by adhering to standard industry practices. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. 2–BTP post-activation products are nonflammable, as are all other available total flooding agents.

EPA is finalizing listing 2–BTP as acceptable, subject to use conditions, as a total flooding agent for use in normally unoccupied spaces under 500 ft^3 because the overall environmental and human health risk posed by the substitute is lower than or comparable to the overall risk posed by other alternatives listed as acceptable in the same end-use.

b. Streaming Uses

Environmental information: The environmental information for this substitute is set forth in the ''Environmental information'' section in listing II.G.3.a above.

Flammability information: 2–BTP is non-flammable.

Toxicity and exposure data: Toxicity and personal protective equipment (PPE) information is described above under total flooding applications. EPA evaluated occupational and general population exposure at manufacture and at end-use to ensure that the use of 2–BTP as a streaming agent will not pose unacceptable risks to workers or the general public. For the occupational exposure assessment, EPA has evaluated the risks associated with potential exposures to 2–BTP during equipment production operations and the filling of fire extinguishers as well as in the case of an inadvertent discharge of the fire extinguisher during maintenance activities.

2–BTP is not expected to pose a risk to workers during manufacture of 2–BTP fire extinguishers when the engineering controls and PPE requirements as referenced in the SDS for this substitute are followed. The potential health risks from exposure to the substitute for personnel during manufacturing is described above under total flooding applications.

EPA also assessed potential end-use exposure scenarios at 7.5-minute and 15-minute TWA exposures for 2–BTP following potential release of agent from the handheld extinguisher in confined spaces (*e.g.,* electronics and server rooms).[64] These exposures were then compared with the cardiotoxic LOAEL for 2–BTP. All but one modeled 7.5-minute and 15-minute exposures for varying ventilation rates were lower than the LOAEL of 10,000 ppm for 2–BTP. The estimated exposures were derived using conservative assumptions (*i.e.,* no mechanical ventilation) and represent a worst-case scenario with a low probability of occurrence. Because anticipated exposures could exceed the exposure limit for 2–BTP, EPA recommends that standard safety techniques to ensure safety during the use of 2–BTP fire extinguishers be followed in non-residential locations. 2–BTP handheld extinguishers should follow required minimum room volumes established by UL 2129, Halocarbon Clean Agent Fire Extinguishers,[65] when discharged into a confined space. This standard prohibits the exceedance of the cardiotoxic LOAEL for any fire suppressant (*i.e.,* 10,000 ppm or 1.0% for 2–BTP). Therefore, per UL 2129, a warning label for 2–BTP extinguishers will mitigate use in confined spaces. Based on the above results, 2–BTP is not expected to pose significant risk to end users when used as a streaming fire extinguishing agent in non-residential applications, except for commercial home office and personal watercraft. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute as best practices for safer use.

Comparison to other fire suppressants: 2–BTP has an ODP of 0.0028, comparable to other listed substitutes in this end-use, with ODPs ranging from zero to 0.022. 2–BTP has a GWP of 0.23–0.26, which for streaming agents is lower than or comparable to that of other acceptable substitutes, with GWPs that range from about zero to 9,810. 2–BTP is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) for the purpose of addressing the development of SIPs to attain and maintain the NAAQS. Other acceptable fire suppression agents currently in use in this end-use are also VOC (*e.g.,* C_6-perfluoroketone), and 2–BTP is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Toxicity risks can be minimized by use consistent with the NFPA 10 Standard for Portable Fire Extinguishers, recommendations in the SDS, and other safety precautions common in the fire suppression industry.

EPA is finalizing listing 2–BTP as acceptable, subject to use conditions, as a streaming agent for use in non-residential applications, except for commercial home office and personal watercraft, because the overall environmental and human health risk posed by the substitute is lower than or comparable to the overall risk posed by other alternatives listed as acceptable in the same end-use.

4. What use conditions is EPA finalizing?

EPA is finalizing listing 2–BTP as acceptable, subject to use conditions. The use conditions are for use in normally unoccupied spaces under 500 ft^3 in total flooding fire suppression systems, and as a streaming agent for use in non-residential applications, except for commercial home offices and personal watercraft.

5. Why is EPA finalizing these specific use conditions?

EPA is finalizing listing 2–BTP as acceptable, subject to use conditions, for use only in normally unoccupied spaces under 500 ft^3 in total flooding fire suppression systems. These space limitations are consistent with additional information submitted to EPA. The limitations correspond to use in small, enclosed spaces, such as an electrical closet. Such spaces would require a smaller amount of fire suppressant, reducing potential exposures to workers and the general public and reducing potential toxicity risks.

Additionally, EPA is finalizing listing 2–BTP as acceptable subject to use conditions as a streaming agent for use

[64] ICF, 2022r. Risk Screen on Substitutes as Streaming Agents in Non-Residential Applications. Substitute: 2-bromo-3,3,3-trifluoropropene (2–BTP).

[65] UL, 2017. Standard 2129—Halocarbon Clean Agent Fire Extinguishers. Edition 3. This document is accessible at: *https://www.shopulstandards.com/ProductDetail.aspx?UniqueKey=32182.*

in non-residential applications, except for commercial home office and personal watercraft. The definition of ''residential use'' in the SNAP regulations at 40 CFR 82.172 is use by a private individual of a chemical substance or any product containing the chemical substance in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not included in this definition, nor is use in automobiles, watercraft, or aircraft. Use in a commercial home office or in personal watercraft could result in exposure to members of the general public, including sensitive individuals such as children or the elderly. In addition, air exchange is often lower in a commercial home office or a personal watercraft than in industrial or other commercial applications, potentially resulting in higher exposure levels than in those other non-residential applications. Because of the more sensitive populations and potentially higher exposures associated with those applications, EPA is finalizing listing 2–BTP for use in non-residential applications other than commercial home office and personal watercraft.

6. How is EPA responding to comments on 2–BTP?

EPA received one comment on the 2–BTP section of the proposed rule. The commenter supported finalizing the rule as proposed.

Comment: American Pacific, the manufacturer of 2–BTP, indicated they ''[s]upport [the proposed rule] findings and conclusions with respect to the 2–BTP clean fire extinguishant.''

Response: EPA acknowledges the support for this proposed listing, and for the reasons discussed above, we are finalizing this listing as proposed.

H. Total Flooding Fire Suppression—Listing of EXXFIRE® as Acceptable, Subject to Use Conditions, for Use in Normally Unoccupied Spaces

1. What is EPA's final listing decision for EXXFIRE®?

As proposed, EPA is finalizing listing EXXFIRE® as acceptable, subject to use conditions, for use in total flooding fire suppression systems in normally unoccupied spaces. EPA received no comments relating to the proposed listing of EXXFIRE®. Prior to activation, the EXXFIRE® formulation is in solid form and contained within a hermetically sealed steel container. Upon detection of a fire, nitrogen gas is released from the unit. The nitrogen gas dilutes the oxygen level within the enclosure, and consequently suppresses the fire. After activation, only gas components exit the casing. All solid products remain inside the casing before, during and after activation. Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 standard.

The redacted submission and supporting documentation for EXXFIRE® are provided in the docket for this proposed rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of this substitute. This assessment is available in the docket for this rule.[66]

2. What is EXXFIRE® and how does it compare to other fire suppressants in the same end-use?

Environmental information: According to the submitter, the active ingredients for this technology are nonvolatile solids before activation so the ODP, atmospheric lifetime, and GWP are all zero. The gaseous post-activation products that are released upon activation of the fire suppressant with GWPs are carbon monoxide (CO), CO_2, and various hydrocarbons with GWPs ranging from less than one to 25; however, these compounds are present in trace amounts, together making up less than 0.5 percent of the total weight of the post-activation products. The majority of the post-activation constituents of EXXFIRE® are either not organic (*e.g.,* nitrogen, oxygen, water, hydrogen) or are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), for the purpose of addressing the development of SIPs to attain and maintain the NAAQS. Some constituents of EXXFIRE® are considered VOC and are not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), including a variety of hydrocarbons; however, these compounds are present in trace amounts.

Flammability information: EXXFIRE® post-activation products are non-flammable, except for certain hydrocarbons that are present in trace amounts.

Toxicity and exposure data: EPA assessed potential health risks from exposure. Most post-activation products for EXXFIRE® are not expected to result in adverse health effects; however, due to the potential presence of lithium fluoride, which is acutely toxic upon inhalation or ingestion and can cause serious skin, eye, and respiratory tract irritation, the use of this system is only recommended for use in normally unoccupied spaces. Although expected to be maintained inside the generator, the potential presence of lithium fluoride in the post-activation particulate products, justifies the necessity for personnel to wear proper PPE (*i.e.,* particulate-removing respirator with NIOSH type N95 or better filters) upon reentry into the space following a discharge of the system to mitigate those risks. The submitter indicates that the proposed substitute can reduce oxygen levels to 10 to 12 percent, which can cause a potential asphyxiation hazard.

EPA evaluated occupational and general population exposure at manufacture of EXXFIRE® systems and at end use to ensure that the use of EXXFIRE® will not pose unacceptable risks to workers or the general public. Exposure is possible upon reentry into a space after a system has been discharged. Protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators should be worn for installation and servicing activities, to protect workers in any event of potential discharge of the substitute, accidental or otherwise. Filling or servicing operations should be performed in well-ventilated areas. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute as best practices for safer use.

Comparison to other fire suppressants: EXXFIRE® has an ODP of zero, comparable to other listed substitutes in this end-use, with ODPs ranging from zero to 0.048. For total flooding agents, EXXFIRE® has a GWP of zero prior to activation (and one to 25 for certain post-activation products present in trace amounts), which is comparable to or lower than that of other acceptable substitutes, such as HFC–227ea and other substitutes with

[66] ICF, 2022s. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: EXXFIRE®.

GWPs up to 22,800.[67] The majority, approximately 99.5 percent, of the post-activation constituents of EXXFIRE® are either not organic or are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), for the purpose of addressing the development of SIPs to attain and maintain the NAAQS. EXXFIRE® is anticipated to pose no greater risk than other alternatives listed as acceptable in this end-use. Toxicity risks can be minimized by use consistent with the NFPA 2001 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. EXXFIRE®'s post-activation products are nonflammable, as are all other available total flooding agents.

EPA is finalizing listing EXXFIRE® as acceptable, subject to use conditions, in the end-use listed above because it does not pose greater overall environmental and human health risk than other available substitutes in the same end-use.

3. What use conditions is EPA finalizing and why?

Consistent with the request by the submitter, and information we have available at this time for our review, the use condition requires that EXXFIRE® be used in total flooding fire suppression systems only in areas that are not normally occupied. EPA conducted this evaluation for use only in unoccupied spaces, and information was provided by the submitter in the SNAP application specific for this type of space based on EPA guidance.[68] EPA needs additional information, such as additional toxicity test information, to issue a listing for normally occupied spaces, compared to a listing for normally unoccupied spaces. This is because of the greater risk that workers or members of the general public may be exposed if a fire suppressant is used in normally occupied spaces. In the absence of such information, as described in EPA's guidance, EPA issues listings for powdered aerosol fire suppressants as acceptable subject to use conditions for use in normally unoccupied spaces only.

4. How is EPA responding to comments on EXXFIRE®?

No comments were received regarding EPA's proposed listing for EXXFIRE®, and for the reasons explained above EPA is finalizing this listing as proposed.

I. Total Flooding Fire Suppression—Listing of Powdered Aerosol H (Pyroquench-α™) as Acceptable, Subject to Use Conditions, for Use in Normally Unoccupied Spaces

1. What is EPA's final listing decision for Powdered Aerosol H?

As proposed, EPA is finalizing listing Powdered Aerosol H, also known as Pyroquench-α™, as acceptable, subject to use conditions, for use in total flooding fire suppression systems in normally unoccupied spaces. EPA received no comments relating to the proposed listing of Powdered Aerosol H. Prior to activation, the Powdered Aerosol H formulation is contained as a solid disk of chemicals in insulated and dual-sealed casings. In response to heat and lack of oxygen, the formulation undergoes a chemical reaction; once the Powdered Aerosol H system is activated, it generates and discharges a homogenous mixture of gas and particulates into a space containing a fire hazard or directly on the hazard itself, extinguishing the fire. In the ''Further Information'' column of the tables at the end of this document, we state that use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2010 Standard for Fixed Aerosol Fire Extinguishing Systems.

The redacted submission and supporting documentation for Powdered Aerosol H are provided in the docket for this final rule (EPA–HQ–OAR–2021–0836) at *https://www.regulations.gov.* EPA performed an assessment to examine the health and environmental risks of each of this substitute. This assessment is available in the docket for this final rule.[69] [70]

2. What is Powdered Aerosol H and how does it compare to other fire suppressants in the same end-use?

Environmental information: According to the submitter, the active ingredients for this technology are nonvolatile solids before activation so the ODP, atmospheric lifetime, and GWP are all zero. The gaseous post-activation products that are released upon activation of the fire suppressant with GWPs are nitrogen dioxide (NO_2) and CO_2, with GWPs of close to zero[71] [72] and one, respectively. The post-activation constituents of Powdered Aerosol H are excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)), for the purpose of addressing the development of SIPs to attain and maintain the NAAQS.

Flammability information: Powdered Aerosol H post-activation products are non-flammable.

Toxicity and exposure data: EPA assessed potential health risks from exposure to the proposed substitute as a total flooding agent in normally unoccupied spaces. Because the pre-activation components of the fire suppressant are prepared in tablets that are non-reactive and do not crumble or flake, there is no concern regarding inhalation or ingestion of the pre-activation compounds. The discharge of the powdered aerosol after activation results in temporary reduced visibility in the protected space due to the uniform distribution of the particulate generated and may cause ocular, dermal, and respiratory irritation. EPA recommends that workers not enter the space following discharge until all particles have settled and the gases released by the total flooding system have dissipated. Use according to the NFPA 2010 Standard will reduce any safety risks due to reduced visibility. The use of proper PPE, such as protective clothing, gloves, goggles, and particulate-removing respirators, during manufacturing, at installation, maintenance, and clean-up, minimizes personnel exposure from inhalation of the substitute. EPA provides additional information on safe use of this substitute for establishments manufacturing, installing and maintaining equipment using this agent in the ''Further Information'' column of the regulatory listing. Since this additional information is not part of the regulatory decision under SNAP, these

[67] For SF_6, the substitute with the highest GWP, the SNAP listing finds SF_6 as ''acceptable subject to narrowed use limits.''

[68] EPA, 2004. A Guide to Completing a Risk Screen: Collection and Use of Risk Screen Data. Fire Suppression Sector. April 2004.

[69] ICF, 2022t. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: Pyroquench-α™.

[70] ICF, 2023b. Risk Screen on Substitutes in Total Flooding Systems in Normally Unoccupied Spaces; Substitute: Pyroquench-α™.

[71] Myhre, et.al., 2013: Anthropogenic and Natural Radiative Forcing. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Available online at: *https://www.ipcc.ch/report/ar5/wg1/.*

[72] In the proposal for this rule, EPA incorrectly noted the GWP for NO_2 as 120. EPA is correcting the GWP and citation in this final rule. This correction does not change EPA's listing of acceptable, subject to use conditions, as set forth in the rule, for use of Powdered Aerosol H in fire protection.

statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of this substitute as best practices for safer use.

EPA expects that procedures identified in the SDS for Powdered Aerosol H and good manufacturing practices will be adhered to, and that the appropriate safety and personal PPE consistent with OSHA guidelines will be used during installation, servicing, post-discharge clean-up and disposal of total flooding systems using Powdered Aerosol H. The manufacturer guidance upon installation of the system provides the appropriate time after which workers may re-enter the area for disposal to allow the maximum settling of all particulates.

Comparison to other fire suppressants: The post-activation products of Powdered Aerosol H have an ODP of zero, comparable to or lower than other listed substitutes in this end-use, with ODPs ranging from zero to 0.048. For total flooding agents, Powdered Aerosol H's GWP of zero prior to activation (and close to zero and one for certain post-activation products) is comparable to or lower than that of other acceptable substitutes, such as HFC–227ea and other substitutes with GWPs up to 22,800.[73] Other acceptable substitutes in this end-use have comparable GWPs ranging from zero to one, such as water, inert gases, and other powdered aerosol fire suppressants. Toxicity risks can be minimized by use consistent with the NFPA 2010 standard, recommendations in the SDS, and other safety precautions common in the fire suppression industry. The potential toxicity risks due to inhalation exposure are common to many total flooding agents, including those already listed as acceptable under SNAP for this same end-use. Powdered Aerosol H's post-activation products are nonflammable, as are all other available total flooding agents.

EPA is finalizing listing Powdered Aerosol H as acceptable, subject to use conditions, in the end-use listed above because it does not pose greater overall environmental and human health risk than other available substitutes in the same end-use.

[73] For SF_6, the substitute with the highest GWP, the SNAP listing finds SF_6 as ''acceptable subject to narrowed use limits.''

3. What use conditions is EPA finalizing and why?

Consistent with the submitter's request, and information we have available at this time for our review, EPA finalizes the use condition that Powdered Aerosol H be used in total flooding fire suppression systems only in areas that are not normally occupied. EPA conducted this evaluation for use only in unoccupied spaces, and information was provided by the submitter in the SNAP application specific for this type of space based on EPA guidance.[74] EPA needs additional information, such as additional toxicity test information, to issue a listing for normally occupied spaces, compared to a listing for normally unoccupied spaces. This is because of the greater risk that workers or members of the general public may be exposed to if a fire suppressant is used in normally occupied spaces. In the absence of such information, as described in EPA's guidance, EPA issues listings for powdered aerosol fire suppressants as acceptable subject to use conditions for use in normally unoccupied spaces only.

4. How is EPA responding to comments on Powdered Aerosol H?

No comments were received regarding EPA's proposed listing for Powdered Aerosol H, and for the reasons discussed above, EPA is finalizing this section of the rulemaking as proposed.

J. How is EPA responding to other comments?

Comment: Several commenters (AHRI, the Alliance, AHAM, Carrier, EIA, Brigett Griffin, LG Electronics, Chemours, and Trane) noted general support for this rulemaking. Additionally, the Alliance and AHAM stressed a desire for the Agency to issue a final rule in a timely manner to ensure that lower GWP alternatives are available. Trane noted their support for a transition to lower flammability ''A2L'' refrigerants.

Response: EPA acknowledges the commenters' support of the listings in this rulemaking. The Agency acknowledges Trane's support for listing A2L refrigerants. EPA is finalizing many listing decisions as proposed and is finalizing other listing decisions with relatively minor changes that address and incorporate information provided in comments as described throughout the preamble above.

[74] EPA, 2004. A Guide to Completing a Risk Screen: Collection and Use of Risk Screen Data. Fire Suppression Sector. April, 2004.

Comment: EIA commented on the GWP of HFC–32 and noted that refrigerants like HFC–32 have lower GWPs than the chemicals they replace and are near-term solutions which help facilitate the reduction in demand for HFCs under the American Innovation and Manufacturing (AIM) Act of 2020. EIA urged that EPA should consider restricting these refrigerants in the future, once additional ultra-low GWP refrigerants become more widely adopted.

Response: EPA acknowledges EIA's concern for the GWPs of various refrigerants and recognition that new alternatives will be more widely adopted in the future. EPA plans to continue to review the GWPs of substitutes consistent with the SNAP program criteria. EIA's comment on the AIM Act is beyond the scope of this action.

Comment: Diversified CPC International stated that EPA should consider listing the ASHRAE A3 refrigerants R–290, R–600, R–600a, R–601a, R–1270, and blends (*i.e.,* propane, butane, isobutane, isopentane, propylene, and blends) as acceptable to align with UL 60335–2–89, 2nd Edition and UL 60335–2–40, 3rd Edition. Additionally, Diversified CPC International and EIA stated that they hoped EPA will prioritize adoption of revised use conditions for refrigeration equipment in a future rule to take into account UL 60335–2–89, 2nd Edition, which would include expanded charge limits for hydrocarbons up to 500 g in self-contained equipment. EIA also stated that modernizing standards for commercial refrigeration will open a pathway for companies to significantly reduce climate impacts while maintaining safe systems. ATMOsphere urged that EPA consider the impending use of hydrocarbons in chillers, ACs and HPs and stated that such systems are becoming widely used in Europe.

Response: EPA acknowledges these comments expressing support for hydrocarbons in the refrigeration and AC sector. EPA did not propose to revise the current use conditions for R–290 or the hydrocarbon blend R–441A for use in self-contained room ACs and HPs. The Agency also did not propose to list R–290, R–600, R–600a, R–601a, R–1270, and blends for use in other end-uses. Therefore, these comments are beyond the scope of this rulemaking. The Agency may consider proposing additional listings, including listings for hydrocarbons and other lower-GWP refrigerants in commercial refrigeration in future rulemakings, in addition to updating use conditions for existing hydrocarbon listings. EPA

acknowledges that in other countries, refrigerants used in chillers may differ from the United States. The Agency's review of substitutes relies on the SNAP program criteria and the conditions in the United States, not on whether a substitute is in use elsewhere.

Comment: ATMOsphere urged the use of refrigerants such as hydrocarbons, CO_2, and ammonia in split-system AC, household refrigerators, supermarket cases, HPs, HP water heaters, and chillers.

Response: EPA acknowledges the increasing use of both fluorinated and non-fluorinated alternatives to ODS. In this action, EPA did not propose to list hydrocarbons, CO_2, or ammonia and thus is not finalizing such a listing in this final rule. The Agency intends to consider proposing additional listings, including listings for non-fluorinated alternatives, in future rulemakings.

Comment: Savannah River Nuclear Solutions stated that EPA needs to exempt the flammable refrigerants identified as being exempt from the venting prohibition contained in 40 CFR 82.l54(a) from RCRA by adding language to 40 CFR 261.2 and/or 40 CFR 261.4. This commenter stated that the lack of exemption in 40 CFR 261.2 and/or 40 CFR 261.4 has resulted in confusion on EPA's position with respect to RCRA regulation of flammable refrigerants that are exempted under 40 CFR 82.154(a) from the venting prohibition. Savannah River Nuclear Solutions noted that the refrigerants in the end-uses described at Subpart G, Appendix R, Items l, 2, 5 and 6 in the July 28, 2022 NPRM are exempt from the venting prohibition contained in 40 CFR 82.l54(a) and in this text, there is no indication the recovery or disposal of these refrigerants in these end uses are hazardous waste under RCRA even when venting occurs in a non-household setting. This commenter cited from multiple rulemakings that exempted certain refrigerants from the venting prohibition under CAA section 608(c)(2).

Response: EPA did not open for comment the listings 1 through 6 in appendix R to 40 CFR part 82, subpart G mentioned by the commenter. Rather, those entries were republished ''to bring the table in line with the Office of the Federal Register's general requirement for orderly codification by: adding entry numbers, replacing prohibited language, and properly formatting the footnotes.'' (87 FR at 45509; July 28, 2022). Similarly, EPA did not reopen the regulations at 40 CFR 261.2 and 40 CFR 261.4 through the NPRM. For these reasons, EPA considers the comment to be outside of the scope of this rulemaking.

In light of the commenter's statement about confusion regarding the RCRA regulation of flammable refrigerants that are exempted under 40 CFR 82.154(a) from the venting prohibition, we note that we have already addressed the applicability of RCRA to spent refrigerants in a previous SNAP rule, which states, for example, that ''propane and other HCs being recovered, vented, released, or otherwise disposed of from commercial and industrial appliances are likely to be hazardous waste under RCRA (see 40 CFR parts 261 through 270).'' (*See* 81 FR at 86799–86800, December 1, 2016, for additional information).

Comment: ATMOsphere, EIA, and an anonymous member of the public commented on the atmospheric decomposition of HFC–134a and HFO–1234yf into trifluoroacetic acid (TFA). ATMOsphere stated that TFA is collecting in the environment, and EIA claimed that ''the presence of persistent fluorinated by-products of HFCs and HFOs is increasing in the environment,'' citing studies finding increasing levels of TFA in ice cores,[75] rainwater,[76] groundwater,[77] and leaf samples.[78] All three commenters expressed concern about the potential risks TFA might pose to human health and the environment. EIA asserted, ''it is reasonable to conduct a complete review of these chemicals rather than allow their continued proliferation,'' and suggested that EPA should evaluate the potential risks from TFA through future SNAP regulations.

Response: EPA appreciates the information provided by EIA on the atmospheric decomposition of HFO–1234yf to TFA. We note that several studies and reports provide further information about this topic. A 2014 study by Kazil, et al. analyzed TFA deposition in the United States assuming 100 percent of all motor vehicle air conditioning (MVAC) systems use HFO–1234yf, which was the largest use of HFO–1234yf at that time.[79] The results indicated that rainwater TFA concentrations, while varying strongly geographically, will on average be low compared to the levels at which toxic effects are observed in aquatic systems. Similarly low TFA concentrations were estimated for emissions of HFO–1234yf from Asia in a 2021 study by David, et al.[80] The World Meteorological Organization also provided a summary of key information pertaining to TFA in their 2022 report to the Montreal Protocol.[81] The report states:

> The formation in the atmosphere of trifluoroacetic acid (TFA) is expected to increase in the coming decades due to increased use of HFOs and HCFOs. TFA, a breakdown product of some HFCs, HCFCs, HFOs and HCFOs, is a persistent chemical with potential harmful effects on animals, plants, and humans. The concentration of TFA in rainwater and ocean water is, in general, significantly below known toxicity limits at present. Potential environmental impacts of TFA require future evaluation due to its persistence. (p. 14)

Most TFA currently found in the environment resulting from decomposition of refrigerants likely derived from HFC–134a, which is being phased down and the use of which is anticipated to decrease in end-uses where safer alternatives are found acceptable under the SNAP program. EPA also notes that the modeling studies referenced generally assume a one-to-one substitution of HFO–1234yf for HFC–134a to be conservative;

[75] Chemical and Engineering News, May 1, 2020. ''CFC replacements are a source of persistent organic pollution in the Arctic.'' K. Bourzic. Available online at: *https://cen.acs.org/environment/persistent-pollutants/CFC-replacements-source-persistent-organic/98/web/2020/05*.

[76] Freeling et al., 2020. F. Freeling, D. Behringer, F. Heydel, M. Scheurer, T. Ternes, and K. Nödler. ''Trifluoroacetate in Precipitation: Deriving a Benchmark Data Set'' *Environ. Sci. Technol.* 2020, 54, 18, 11210–11219. August 17, 2020. Available online at: *https://pubs.acs.org/doi/10.1021/acs.est.0c02910*.

[77] Zihan Zhai et al., 2015. Zihan Zhai, Jing Wu, Xia Hu, Li Li, Junyu Guo, Boya Zhang, Jianxin Hu, and Jianbo Zhang. ''A 17-fold increase of trifluoroacetic acid in landscape waters of Beijing, China during the last decade,'' *Chemosphere.* 2015 Jun; 129:110–7. doi: 10.1016/j.chemosphere.2014.09.033. Abstract available online at *https://pubmed.ncbi.nlm.nih.gov/25262947/*.

[78] Freeling et al., 2022. F. Freeling, M. Scheurer, J. Koschorreck, G. Hoffmann, T.A. Ternes, and K. Nödler. ''Levels and Temporal Trends of Trifluoroacetate (TFA) in Archived Plants: Evidence for Increasing Emissions of Gaseous TFA Precursors over the Last Decades,'' *Environ. Sci. Technol. Lett.* 2022, 9, 5, 400–405. April 18, 2022. Available online at: *https://pubs.acs.org/doi/10.1021/acs.estlett.2c00164*.

[79] Kazil et al., 2014. ''Deposition and rainwater concentrations of trifluoroacetic acid in the United States from the use of HFO–1234yf'' J. Kazil, S. McKeen, S.-W. Kim, R. Ahmadov, G.A. Grell, R.K. Talukdar, A.R. Ravishankara. *JGR Atmospheres.* Volume 119, Issue 24. December 27, 2014. Pages 14,059–14,079. October 31, 2014. Available online at *https://agupubs.onlinelibrary.wiley.com/doi/full/10.1002/2014JD022058*.

[80] David et al., 2021. ''Trifluoroacetic acid deposition from emissions of HFO–1234yf in India, China, and the Middle East,'' Volume 21, issue 19. *Atmos. Chem. Phys.,* 21, 14833–14849, 2021. *https://doi.org/10.5194/acp-21-14833-2021*. Available online at *ttps://acp.copernicus.org/articles/21/14833/2021/*.

[81] World Meteorological Organization (WMO), 2022. Executive Summary. Scientific Assessment of Ozone Depletion: 2022, GAW Report No. 278, 56 pp.; WMO: Geneva, 2022. Available online at *https://ozone.unep.org/system/files/documents/Scientific-Assessment-of-Ozone-Depletion-2022-Executive-Summary.pdf*.

however, none of the end-uses in this final rule where HFO–1234yf is being listed as acceptable are anticipated to cause a one-for-one transition from HFC–134a to HFO–1234yf. Any increase in TFA deposition due to this rule is expected to be less than the modeled increases in TFA from studies that found the levels of TFA in the environment remained, ''too small to be a risk to the environment over the next few decades.'' Use of HFO–1234yf and concerns about TFA in applications not addressed by this final rule are outside the scope of this rulemaking.

There are ongoing evaluations of the potential risks of TFA exposure. In 2020, the Environmental Effects Assessment Panel (EEAP) to the Montreal Protocol released an update [82] to its report on the environmental effects of stratospheric ozone depletion, UV radiation, and interactions with climate change, including the potential effects of TFA from ODS and their substitutes. That report noted that TFA ''has a no-observed-effect-concentration (NOEC) for aquatic species, which is typically >10,000 µg/L,'' while ''analysis of 1187 samples of rainwater collected in eight locations across Germany in 2018–2019 showed median and a precipitation-weighted mean concentration of TFA of 0.210 µg/L and 0.335 µg/L, respectively,'' and ''another recent paper reported TFA . . . in precipitation in the low µg/L range across 28 cities in mainland China.'' These studies and others led the EEAP to state, ''Trifluoroacetic acid continues to be found in the environment, including in remote regions, although not at concentrations likely to have adverse toxicological consequences.''

In its 2021 Summary Update for Policymakers,[83] the EEAP stated:

> TFA likely has natural geochemical sources, is widely used in industry and research laboratories, and is a by-product of the synthesis and degradation of fluorinated and perfluorinated compounds (PFCs). . . . TFA has recently been found in precipitation, surface waters, and indoor dust in China . . ., although concentrations are below those considered toxic. No additional studies on the toxicity of TFA to organisms have been reported, but prior research has shown that this compound is not highly toxic to mammals and aquatic organisms, although some plants and algae may be sensitive. . . . At present, it is not possible to quantify the proportion of anthropogenic sources of TFA resulting from substances not falling under the purview of the Montreal Protocol, but available evidence indicates that this breakdown product is of minimal risk to human health. (p. 10; references in the text omitted here)

In response to EIA's suggestion that EPA evaluate potential risks from TFA through future SNAP rules, EPA notes that it does consider ecotoxicity as a criterion when evaluating alternatives under SNAP's comparative risk framework, and the Agency has considered the potential impacts of TFA in past actions that found HFO–1234yf acceptable in certain end-uses. For example, EPA studied the potential generation of TFA when first listing neat (*i.e.,* 100%, not in blends) HFO–1234yf as acceptable, subject to use conditions, in motor vehicle air conditioning. The myriad studies EPA referenced all concluded that the additional TFA from HFO–1234yf did not pose a significant additional risk, even if it were assumed to be used as the only refrigerant in all refrigeration and air conditioning equipment (76 FR 17492–17493, March 29, 2011). The Agency intends to continue its approach to evaluating the potential risks from TFA in future SNAP regulations. Based on current information, EPA does not consider the overall risk to human health and the environment due to the listings in this final rule to be significantly greater than for other available or potentially available substitutes for the same uses.

Comment: Three commenters (ATMOsphere, EIA, and an anonymous commenter) expressed concern about per- and poly-fluoroalkyl substances (PFAS). Commenters noted that under some definitions of PFAS, HFCs and HFOs discussed in this rule are considered PFAS, and two of the commenters suggested EPA should adopt a particular definition of PFAS. The commenters noted that some PFAS chemicals, *e.g.,* perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), present risks to human health and the environment.

Response: EPA understands that currently, there is no single commonly agreed definition of PFAS, and whether or not HFCs or HFOs are classified as PFAS depends on the definition being used. EPA's PFAS roadmap, available at *https://www.epa.gov/pfas,* sets timelines for specific actions and outlines EPA's commitments to new policies to safeguard public health, protect the environment, and hold polluters accountable. This rule does not in any way establish a definition of PFAS, nor do the listing decisions depend on a specific definition. In evaluating alternatives using its comparative risk framework, SNAP already considers potential risks to human health and the environment. Regardless of what definition of PFAS is used, not all PFAS are the same in terms of toxicity or any other risk. Some PFAS have been shown to have extremely low toxicity, for example. If a chemical has been found to present lower overall risk to human health or the environment, it might be found acceptable under SNAP regardless of whether or not it falls under a particular definition of PFAS. Likewise, SNAP might not find a potential alternative acceptable if it presented greater overall risk, regardless of whether or not it falls under a particular definition of PFAS. As described in the risk screens for alternatives found in the docket for this rulemaking, potential risk to human health or the environment has been considered directly for each chemical, and the risks are not assumed to follow from a chemical falling into any particular category of substances.

III. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0226. The approved Information Collection Request includes five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a Toxic Substances Control Act (TSCA)/SNAP Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. This action does not impose a new information collection burden under the PRA because the existing Information Collection Request already includes recordkeeping for substitutes acceptable subject to use restrictions—*i.e.,* acceptable subject to

[82] EEAP, 2020. ''Environmental effects of stratospheric ozone depletion, UV radiation, and interactions with climate change: UNEP Environmental Effects Assessment Panel, Update 2020.'' Photochemical & Photobiological Sciences *https://doi.org/10.1007/s43630-020-00001-x.* Available online at: *https://engineering.case.edu/centers/sdle/sites/engineering.case.edu.centers.sdle/files/neale_et_al._-_2021_-_environmental_effects_of_stratospheric_ozone_deple.pdf.*

[83] EEAP, 2021. ''Summary Update 2021 for Policymakers'' UNEP Environmental Effects Assessment Panel. Available online at: *https://ozone.unep.org/sites/default/files/assessment_panels/EEAP-summary-update-2021-for-policymakers.pdf.*

use conditions or acceptable subject to narrowed use limits.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This action adds the additional options under SNAP of using HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H, in the specified end-uses, but does not mandate such use. Users who choose to avail themselves of this flexibility for R–1150 must make a reasonable effort to ascertain that other substitutes or alternatives are not technically feasible and must document and keep records of the results of such investigations. Because equipment for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, and R–454C is not manufactured yet in the U.S. for the chillers and residential dehumidifiers end-uses, no change in business practice is required to meet the use conditions, resulting in no adverse impact compared with the absence of this rule. Similarly, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H are listed as acceptable with use conditions consistent with industry standards and with the intended uses described by the submitters, also requiring no change in business practices and resulting in no adverse impact compared with the absence of this rule. The new use conditions for HFC–32 in self-contained room ACs and HPs were requested by industry and allow use consistent with the more recent standard, UL 60335–2–40, while also allowing continued use with another existing standard, UL 484, until the consensus standard setting organization sunsets that older standard; these would allow for greater consistency in business practices for different types of equipment using the same refrigerant while giving industry time to transition between two industry standards. Equipment for HFC–32 already manufactured prior to the effective date of this final rule would not be affected. Self-contained room ACs and HPs using HFC–32 have been subject to similar use conditions, and thus the updated requirements result in no adverse impact compared with the absence of this rule. Thus, the final rule will not impose new costs on small entities. We have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175.Thus, Executive Order 13175 does not apply to this action. EPA periodically updates Tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other formats.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. While EPA has not conducted a separate analysis of risks to infants and children associated with this rule, the rule does contain use conditions that would reduce exposure risks to the general population, with the reduction of exposure being most important to the most sensitive individuals. This action's health and risk assessments are contained in the comparisons of toxicity for the various substitutes, as well as in the risk screens for the substitutes that are listed in this rule. The risk screens are in the docket for this rulemaking.

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

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

I. National Technology Transfer and Advancement Act and 1 CFR Part 51

This action involves technical standards. EPA has decided to use and incorporate by reference three technical safety standards in the use conditions for the types of refrigeration and air conditioning equipment addressed in this action: two standards developed by UL and one developed by ASHRAE.

EPA incorporates by reference the 2019 edition of UL Standard 60335–2–40, which establishes requirements for the evaluation of commercial and residential AC and dehumidifier equipment and safe use of flammable refrigerants, among other things. Additionally, EPA uses and incorporates by reference the 2021 edition of UL Standard 61010–2–011, which establishes requirements for the evaluation of laboratory equipment and safe use of flammable refrigerants, among other things. These standards are discussed in greater detail in sections II.E and II.F.4 of this preamble.

The 2019 UL Standard 60335–2–40 and 2021 UL Standard 61010–2–011 are available at *http://www.shopulstandards.com/ProductDetail.aspx?UniqueKey=36463* and may be purchased by mail at: COMM 2000, 151 Eastern Avenue, Bensenville, IL 60106; Email: *orders@shopulstandards.com;* phone: 1–888–853–3503 in the U.S. or Canada (other countries dial 1–415–352–2178); website: *http://ulstandards.ul.com/* or *www.comm-2000.com.* The cost of each of the 2019 UL Standard 60335–2–40 and 2021 UL Standard 61010–2–011 is $440 for an electronic copy and $550 for hardcopy. UL also offers a subscription service to the Standards Certification Customer Library that allows unlimited access to their standards and related documents. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers and purchase is not necessary for those selling, installing, and servicing the equipment. Therefore, EPA concludes that the UL standards incorporated by reference is reasonably available.

EPA is also incorporating by reference ANSI/ASHRAE Standard 15–2019,

Safety Standard for Refrigeration Systems, in the use conditions for six refrigerants listed for use in chillers. This standard concerns the safe design, construction, installation, and operation of refrigeration systems. This standard is available at *https://www.ashrae.org/resources-publications/bookstore/standards-15-34* and may be purchased by mail at: 6300 Interfirst Drive, Ann Arbor, MI 48108; by phone: 1–800–527–4723 in the U.S. or Canada; website: *http://www.techstreet.com/ashrae/ashrae_standards.html?ashrae_auth_token=.* The cost of ASHRAE Standard 15–2019 is $159.00 for an electronic copy or hardcopy. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers or for those selling, installing and servicing the equipment. Therefore, EPA concludes that the ASHRAE standard incorporated by reference is reasonably available.

EPA is incorporating by reference the following addenda to ANSI/ASHRAE Standard 15–2019, available at *https://www.ashrae.org/technical-resources/standards-and-guidelines/standards-addenda:*

- Addendum a, ANSI-approved February 6, 2020, concerning updates to providing capacity factors for overpressure protection and introducing a method for calculating pressure relief capacity factors for refrigerants not included in the standard.
- Addendum b, ANSI-approved February 6, 2020, concerning updates to the definition of ''listed,'' and adding the term ''labeled.''
- Addendum c, ANSI-approved September 1, 2020, concerning updates to allow the use of equipment using small amounts of non-A1 refrigerants if they are listed to appropriate safety standards.
- Addendum d, ANSI-approved April 29, 2022, concerning clarification that the standard does not apply to residential refrigeration systems.
- Addendum e, ANSI-approved January 27, 2022, concerning revisions to requirements related to refrigerant piping.
- Addendum f, ANSI-approved September 30, 2020, concerning the addition of a new appendix providing clarifying, nonmandatory information, movement of mandatory information into the body of the standard, and updates to references.
- Addendum i, ANSI-approved July 31, 2020, concerning the modification of the standard by deferring regulation of ammonia refrigeration to ANSI/IIAR 2 and removal of erroneous references to ammonia.
- Addendum j, ANSI-approved October 30, 2020, concerning the replacement of the terms ''flammable'' and ''nonflammable'' with the specific refrigerant class.
- Addendum k, ANSI-approved October 30, 2020, concerning the modification of the existing listing requirement in the standard by clarifying the acceptable product safety listing standards.
- Addendum m, ANSI-approved June 30, 2022, concerning the modification of allowances for the use of mechanical ventilation to expand this mitigation strategy for human comfort applications using A2L refrigerants, helping to harmonize the standard with UL 60335–2–40, 3rd Edition.
- Addendum n, ANSI-approved May 31, 2022, concerning the address of a continuous maintenance proposal to clarify wording about airflow face velocity.
- Addendum o, ANSI-approved April 29, 2022, concerning the clarification of notification requirements.
- Addendum q, ANSI-approved May 31, 2022, concerning the modification of requirements for mechanical ventilation in machinery rooms using only 2L classified refrigerants, updates to the graphical method for determining required ventilation rates, and addition of an alternate calculation method for compliance.
- Addendum r, ANSI-approved May 31, 2022, concerning the modification of the definition of machinery rooms.

EPA has already incorporated the following standards into appendix R: UL 471 (November 24, 2010); UL 484 (December 21, 2007, with changes through August 3, 2012); UL 541 (December 30, 2011); and UL 60335–2–24 (April 28, 2017).

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. This action's health and environmental risk assessments are contained in the comparison of health and environmental risks for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H, as well as in the risk screens that are available in the docket for this rulemaking. EPA's analysis indicates that other environmental impacts and human health impacts of HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H are comparable to or less than those of other substitutes that are listed as acceptable for the same end-use. Because adoption of the new substitutes listed in this final rule is voluntary, the Agency is unable to quantify when, where, and how much of the listed substitutes will be produced and used. Thus, EPA cannot determine the extent to which this rule will exacerbate or reduce existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA believes that it is not practicable to assess whether this action is likely to result in new disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. However, the listings for HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C, R–1150, 2–BTP, EXXFIRE®, and Powdered Aerosol H in the end-uses addressed in this action provide additional lower-GWP and ODP or comparable alternatives in their respective end-uses. By providing lower-GWP and ODP or comparable alternatives for these end-uses, this rule is anticipated to reduce the use and eventual emissions of potent greenhouse gases in these end-uses, which could help to reduce the effects of climate change, including the public health and welfare effects on people of color, communities of low-income and/or Indigenous peoples. The Agency will continue to evaluate the impacts of this program on communities with environmental justice concerns and consider further action, as appropriate.

K. Congressional Review Act (CRA)

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

IV. References

Unless specified otherwise, all documents are available electronically through the Federal Docket Management System at *https://www.regulations.gov,* Docket number EPA–HQ–OAR–2021–0836.

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Stratospheric ozone layer.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Amend appendix R to subpart G of part 82 by:

■ a. Revising the heading;

■ b. Revising the table entitled ''Substitutes That Are Acceptable Subject to Use Conditions'' and amending the ''Note'' immediately following the table by removing the last two undesignated paragraphs.

The revisions read as follows:

Appendix R to Subpart G of Part 82—Substitutes Subject to Use Restrictions Listed in the December 20, 2011, Final Rule, Effective February 21, 2012, and in the April 10, 2015 Final Rule, Effective May 11, 2015, and in the April 28, 2023 Final Rule, Effective May 30, 2023

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Household refrigerators, freezers, and combination refrigerators and freezers (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	As of September 7, 2018: These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for a different refrigerant). These refrigerants may be used only in a refrigerator or freezer, or combination refrigerator and freezer, that meets all requirements listed in UL 60335–2–24.[1 2 6]	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
				Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with these refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.
2. Retail food refrigerators and freezers (stand-alone units only) (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1 2 3] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/ Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then retail food refrigerators and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1⁄16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.
3. Very low temperature refrigeration Non-mechanical heat transfer (New equipment only).	Ethane (R–170).	Acceptable subject to use conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* the substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This refrigerant may only be used in equipment that meets all requirements in Supplement SB to UL 471.[1 2 3] In cases where listing 3 of this table includes requirements more stringent than those of UL 471, the appliance must meet the requirements of listing 3 of this table in place of the requirements in UL 471. The charge size for the equipment must not exceed 150 g (5.29 oz) in each circuit. As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1 2 3] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing."	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquified petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling ethane. Special care should be taken to avoid contact with the skin since ethane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/ Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Technicians should only use spark-proof tools when working on equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing ethane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1⁄16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Example of non-mechanical heat transfer using this refrigerant would be use in a secondary loop of a thermosiphon.
4. Vending Machines (New equipment only).	Isobutane (R–600a) Propane (R–290) R–441A.	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). Detaching and replacing the old refrigeration circuit from the outer casing of the equipment with a new one containing a new evaporator, condenser, and refrigerant tubing within the old casing is considered "new" equipment and not a retrofit of the old, existing equipment. These substitutes may only be used in equipment that meets all requirements in Supplement SA to UL 541.[125] In cases where listing 4 of this table includes requirements more stringent than those of UL 541, the appliance must meet the requirements of listing 4 of this table in place of the requirements in UL 541 The charge size for vending machines must not exceed 150 g (5.29 oz) in each circuit. As provided in clauses SA6.1.2 to SA6.1.5 of UL 541,[125] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/ Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (¼ inch) high.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigeration equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1⁄16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	
5. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only).	Propane (R–290) R–441A.	Acceptable subject to use conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These refrigerants may only be used in equipment that meets all requirements in Supplement SA and Appendices B through F of UL 484.[1 2 4] In cases where listing 5 includes requirements more stringent than those of UL 484, the appliance must meet the requirements of listing 5 of this table in place of the requirements in UL 484. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484 for the room size where the air conditioner is used. The charge size for these three refrigerants must in no case exceed 1,000 g (35.3 oz or 2.21 lbs) of propane or 1,000 g (35.3 oz or 2.21 lb) of R–441A. For portable air conditioners, the charge size must in no case exceed 300 g (10.6 oz or 0.66 lbs) of propane or 330 g (11.6 oz or 0.72 lb) of R–441A. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in table A, B, C, D, or E of this appendix R. As provided in clauses SA6.1.2 to SA6.1.5 of UL 484,[1 2 4] the following markings must be attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. For R–441A, use a lower flammability limit of 0.041 kg/m^3 in calculations in Appendix F of UL 484. All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1⁄16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes: Window air conditioning units. Portable room air conditioners. Packaged terminal air conditioners and heat pumps.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
6. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only) manufactured from May 10, 2015 and up to but not including May 30, 2023.	HFC–32	Acceptable subject to use conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* this substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This refrigerant may only be used in equipment that meets all requirements in Supplement SA and Appendices B through F of UL 484.[124] In cases where this listing 6 of this table includes requirements more stringent than those of UL 484, the appliance must meet the requirements of listing 6 of this table in place of the requirements in UL 484. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484 for the room size where the air conditioner is used. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in table A, B, C, D, or E of this appendix. For equipment following this listing 6, and as provided in clauses SA6.1.2 to SA6.1.5 of UL 484,[124] the following markings must be attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1⁄16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes: Window air conditioning units. Portable room air conditioners. Packaged terminal air conditioners and heat pumps.
7. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only) manufactured from May 30, 2023 through January 1, 2024.	HFC–32	Acceptable subject to use conditions.	This refrigerant may only be used in equipment that meets all requirements in either: (1) Supplement SA and Appendices B through F of UL 484 [124] and listing 6 of this table, or (2) UL 60335–2–40 [127] and listing 8 of this table.	
8. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only) manufactured on or after January 2, 2024.	HFC–32	Acceptable Subject to Use Conditions.	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* this substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This substitute may only be used in air conditioning equipment that meets all requirements in UL 60335–2–40 [127] and this listing 8 of this table. In cases where this listing 8 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 8 in place of the requirements in UL 60335–2–40. The following markings must be attached at the locations provided and must be permanent:	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated.

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(a) On the outside of the equipment: ''WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.'' (b) On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.'' (c) On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed.'' (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations.'' a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: ''Minimum Installation height, X m (W ft).'' This marking is only required if required by the UL 60335–2–40. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 8 or at the top of the marking if marking (a) is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2).'' The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.'' (g) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone® Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25 mm) in both directions from such locations and shall be replaced if removed.	Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[2 7] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744. 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.*

[2] You may obtain the material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; email: *orders@comm-2000.com;* phone: 1–888–853–3503 in the U.S. or Canada (other countries +1–415–352–2168); website: *https://ulstandards.ul.com/* or *www.comm-2000.com.*

[3] UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. November 24, 2010.

[4] UL 484. Room Air Conditioners. 8th edition. Supplement SA: Requirements for Room Air Conditioners Employing a Flammable Refrigerant in the Refrigerating System and Appendices B through F. December 21, 2007, with changes through August 3, 2012.

[5] UL 541. Refrigerated Vending Machines. 7th edition. Supplement SA: Requirements for Refrigerated Venders Employing a Flammable Refrigerant in the Refrigerating System. December 30, 2011.

[6] UL 60335–2–24. Standard for Safety: Requirements for Household and Similar Electrical Appliances—Safety—Part 2–24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers, Second edition, dated April 28, 2017.

[7] UL 60335–2–40, Standard for Safety: Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, 3rd edition, Dated November 1, 2019.

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■ 3. Add appendix X to subpart G of part 82 to read as follows:

Appendix X to Subpart G of Part 82—Substitutes Listed in the April 28, 2023 Final Rule—Effective May 30, 2023

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Narrowed use limits	Further information
1. Very low temperature refrigeration (new only).	R–1150	Acceptable Subject to Use Conditions and Narrowed Use Limits.	• Temperature range—R–1150 may only be used in equipment designed specifically to reach temperatures lower than −80 °C (−112 °F). • The manufacturers of new very low temperature equipment need to demonstrate that other alternatives are not technically feasible. They must document the results of their evaluation that showed the other alternatives to be not technically feasible and maintain that documentation in their files. This documentation, which does not need to be submitted to EPA unless requested to demonstrate compliance, "shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes." (40 CFR 82.180(b)(3)).	

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Centrifugal Chillers for comfort cooling and Industrial Process Air Conditioning. Positive Displacement Chillers for comfort cooling and Industrial Process Air Conditioning.	HFC–32, HFO–1234yf, R–452B, R–454A, R–454B, R–454C.	Acceptable Subject to Use Conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in air conditioning equipment that meets all requirements in UL 60335–2–40.[1 3 5] In cases where this listing 1 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 1 in place of the requirements in the UL 60335–2–40. These refrigerants may be used in chillers if and only if such chiller meets all requirements listed in ASHRAE 15–2019.[1 2 4] In cases where this listing 1 includes requirements different than those of ASHRAE 15–2019, the appliance must meet the requirements of this listing 1 in place of the requirements in ASHRAE 15–2019. Where similar requirements of ASHRAE 15–2019 and UL 60335–2–40 differ, the more stringent or conservative condition shall apply unless superseded by this listing 1. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel, Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used."	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
			(c) On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed.'' (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations'' a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: ''Minimum Installation Height, X m (W ft).'' This marking is only required if required by UL 60335–2–40. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 1or at the top of the marking if marking (a) is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2).'' The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.'' (g) For fixed equipment that is ducted, near the nameplate: ''WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.'' (h) All of these markings must be in letters no less than 6.4 mm (1⁄4 inch) high. The equipment must have red Pantone® Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25 mm) in both directions from such locations and shall be replaced if removed.	Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40, 3rd edition.[35] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
2. Residential Dehumidifiers.	HFO–1234yf, HFC–32, R–452B, R–454A, R–454B, and R–454C.	Acceptable Subject to Use Conditions.	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in dehumidifier equipment that meets all requirements in UL 60335–2–40.[1 3 5] In cases where this listing 2 includes requirements more stringent than those of UL 60335–2–40, the appliance must meet the requirements of this listing 2 in place of the requirements in UL 60335–2–40. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)." This marking is only required if required by UL 60335–2–40. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below marking (a) of this listing 2 or at the top of the marking if marking (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)." The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335–2–40. Note that the formatting here is slightly different than UL 60335–2–40; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) On the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone® Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25 mm) in both directions from such locations and shall be replaced if removed.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

REFRIGERANTS—SUBSTITUTES ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
3. Very Low Temperature Refrigeration.	R–1150	Acceptable Subject to Use Conditions.	R–1150 may be used only in new equipment specifically designed and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). R–1150 may only be used in laboratory equipment that meet all requirements in UL 61010–2–011.[1 3 6] In cases where this listing 3 includes requirements more stringent than those of UL 61010–2–011, the appliance must meet the requirements of this listing 3 in place of the requirements in UL 61010–2–011. Requirements of note include: (a) Warning labels—The following markings, or the equivalent, must be provided in letters no less than 6.4 mm (1⁄4 inch) high and must be permanent: (b) Attach near the machine compartment: "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing" (c) Attach near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) Attach on the exterior of the refrigeration equipment: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Attach near all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." (f) Attach on the exterior of the refrigeration equipment: "This equipment is intended for use in commercial, industrial, or institutional occupancies as defined in the Safety Standard for Refrigeration Systems, ANSI/ASHRAE 15." (g) Attach on the exterior of the shipping carton: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations." (h) The instructions shall include the following warnings as necessary: a. "WARNING: Ensure all ventilation openings are not obstructed." b. "WARNING: Do not use mechanical devices or other means to accelerate the defrosting process, other than those recommended by the manufacturer." c. "WARNING: Do not damage the refrigerant circuit." Equipment must have distinguishing red (Pantone® Matching System (PMS) #185 or RAL 3020) color-coded hoses and piping to indicate use of a flammable refrigerant. The laboratory equipment shall have marked service ports, pipes, hoses and other devices through which the refrigerant is serviced. Markings shall extend at least 1 inch (25 mm) from the servicing port and shall be replaced if removed. Equipment must use no more than 150 g of R–1150 in each refrigerant circuit using this refrigerant.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex HH of UL 60335–2–40.[3 5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from residential and light commercial air conditioning appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, *www.epa.gov/dockets,* (202) 202–1744. 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.*

[2] You may obtain this material from: American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; phone: 404–636–8400; website: *www.ashrae.org.*

[3] You may obtain this material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue, Bensenville, IL 60106; phone: 415–352–2168; email: *orders@comm-2000.com;* website: *https://ulstandards.ul.com/* or *www.comm-2000.com.*

[4] ANSI/ASHRAE Standard 15–2019. Safety Standard for Refrigeration Systems, Copyright 2019, including the following addenda to ANSI/ASHRAE Standard 15–2019, Safety Standard for Refrigeration Systems:

Addendum a, ANSI—approved February 6, 2020.
Addendum b, ANSI—approved February 6, 2020.
Addendum c, ANSI—approved September 1, 2020.
Addendum d, ANSI—approved April 29, 2022.
Addendum e, ANSI—approved January 27, 2022.
Addendum f, ANSI—approved September 30, 2020.
Addendum i, ANSI—approved July 31, 2020.
Addendum j, ANSI—approved October 30, 2020.
Addendum k, ANSI—approved October 30, 2020.
Addendum m, ANSI—approved June 30, 2022.
Addendum n, ANSI—approved May 31, 2022.

Addendum o, ANSI—approved April 29, 2022.
Addendum q, ANSI—approved May 31, 2022.
Addendum r, ANSI—approved May 31, 2022.

[5] UL 60335–2–40, Standard for Safety: Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, 3rd edition, Dated November 1, 2019.

[6] UL 61010–2–011, Standard for Safety: Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 011: Particular Requirements for Refrigerating Equipment, 2nd edition, Dated May 13, 2021.

FIRE SUPPRESSION AND EXPLOSION PROTECTION AGENTS—ACCEPTABLE SUBJECT TO USE CONDITIONS

End-use	Substitute	Decision	Use conditions	Further information
1. Total Flooding	2–BTP	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces under 500 ft³.	This fire suppressant has a relatively low GWP of 0.23–0.26 and a short atmospheric lifetime of approximately seven days. This agent is subject to a TSCA section 5(a)(2) SNUR. For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • This agent should be used in accordance with the safety guidelines in the latest edition of NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems; [1] • In the case that 2–BTP is inhaled, person(s) should be immediately removed and exposed to fresh air; if breathing is difficult, person(s) should seek medical attention; • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes, including under the eyelids, with fresh water and move to a non-contaminated area; • Exposed persons should remove all contaminated clothing and footwear to avoid irritation; and medical attention should be sought if irritation develops or persists; • Although unlikely, in case of ingestion of 2–BTP, the person(s) should consult a physician immediately; • Manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation to effectively mitigate potential occupational exposure; regular testing and monitoring of the workplace atmosphere should be conducted; • Employees responsible for chemical processing should wear the appropriate PPE, such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation; • All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. • Safety features that are typical of total flooding systems such as predischarge alarms, time delays, and system abort switches should be provided, as directed by applicable OSHA regulations and NFPA standards.[1] Use of this agent should also conform to relevant OSHA requirements, including 29 CFR 1910.160 and 1910.162. See notes 1 through 5 to this table.
2. Streaming	2–BTP	Acceptable, Subject to Use Conditions.	Acceptable only for use in non-residential applications, except for commercial home office and personal watercraft.	This fire suppressant has a relatively low GWP of 0.23–0.26 and a short atmospheric lifetime of approximately seven days. This agent is subject to a TSCA section 5(a)(2) SNUR. For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • This agent should be used in accordance with the safety guidelines in the latest edition of NFPA 10, Standard for Portable Fire Extinguishers; [1] • In the case that 2–BTP is inhaled, person(s) should be immediately removed and exposed to fresh air; if breathing is difficult, person(s) should seek medical attention; • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes, including under the eyelids, with fresh water and move to a non-contaminated area; • Exposed persons should remove all contaminated clothing and footwear to avoid irritation; and medical attention should be sought if irritation develops or persists; • Although unlikely, in case of ingestion of 2–BTP, the person(s) should consult a physician immediately;

FIRE SUPPRESSION AND EXPLOSION PROTECTION AGENTS—ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End-use	Substitute	Decision	Use conditions	Further information
				• Manufacturing space should be equipped with specialized engineering controls and well ventilated with a local exhaust system and low-lying source ventilation to effectively mitigate potential occupational exposure; regular testing and monitoring of the workplace atmosphere should be conducted; • Employees responsible for chemical processing should wear the appropriate PPE, such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation; • All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See notes 1 through 5 to this table.
3. Total Flooding	EXXFIRE®	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces.	Use of this agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems.[1] For establishments manufacturing, installing and maintaining equipment using this agent, EPA recommends the following: • In the case that EXXFIRE® is inhaled, person(s) should be immediately removed and exposed to fresh air. • Eye wash and quick drench facilities should be available. In case of ocular exposure, person(s) should immediately flush the eyes with water for a minimum of 15 minutes. • In the case of dermal exposure, the SDS recommends that person(s) should remove large grain particles, rinse with water for a minimum of 15 minutes, and remove all contaminated clothing. • Manufacturing space should be equipped with engineering controls, specifically an adequate exhaust ventilation system, to effectively mitigate potential occupational exposure. • Employees responsible for chemical processing should wear the appropriate personnel protective equipment (PPE), such as protective gloves, tightly sealed goggles, protective work clothing, and suitable respiratory protection in case of accidental release or insufficient ventilation. • All spills should be cleaned up immediately in accordance with good industrial hygiene practices. • Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. • Safety features that are typical of total flooding systems such as predischarge alarms, time delays, and system abort switches should be provided, as directed by applicable OSHA regulations and NFPA standards.[1] See notes 1 through 5 to this table.
4. Total Flooding	Powdered Aerosol H.	Acceptable Subject to Use Conditions.	Acceptable only for use in normally unoccupied spaces.	Use of this agent should be in accordance with the safety guidelines in the latest edition of NFPA 2010, Standard for Fixed Aerosol Fire Extinguishing Systems.[1] For establishments manufacturing, installing, and maintaining equipment using this agent, EPA recommends the following: • Workers should use appropriate safety and protective equipment (*e.g.,* protective gloves, tightly sealed goggles, protective work clothing, and particulate-removing respirators using NIOSH type N95 or better filters) consistent with OSHA guidelines. • A local exhaust system should be installed and operated to provide adequate ventilation to reduce airborne exposure to Powdered Aerosol H constituents. • An eye wash fountain and quick drench facility should be close to the production area. • Training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent. • Workers responsible for cleanup should allow particulates to settle before reentering area and wear appropriate personal protective equipment. • All spills should be cleaned up immediately in accordance with good industrial hygiene practices. See notes 1 through 5 to this table.

[1] National Fire Protection Association (NFPA) standards are available from *www.nfpa.org.*

Note 1: EPA recommends that users consult Section VIII of the OSHA Technical Manual for information on selecting the appropriate types of personal protective equipment for all listed fire suppression agents. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.,* respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

Note 2: Use of all listed fire suppression agents should conform to relevant OSHA requirements, including 29 CFR 1910.160 and 1910.162.

Note 3: Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.

Note 4: Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.

Note 5: The agent should be recovered from the fire protection system in conjunction with testing or servicing and recycled for later use or destroyed.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 230420–0108]

RIN 0648–BK57

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Coast Guard (Coast Guard) for authorization to take marine mammals incidental to conducting construction activities related to maintenance and repair at facilities in Alaska over the course of 5 years (2023–2028). As required by the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than May 30, 2023.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0023 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Coast Guard's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

We received an application from Coast Guard requesting 5-year regulations and authorization to take multiple species of marine mammals. This proposed rule would establish a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Coast Guard's construction activities related to maintenance and repair at facilities in Alaska.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing 5-year regulations, and for any subsequent Letters of Authorization (LOAs). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Proposed Rule

Following is a summary of the major provisions of this proposed rule regarding Coast Guard construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities.
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals.
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring, and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or

cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Information in the Coast Guard's application and this document collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this document prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On March 15, 2021, NMFS received an application from the Coast Guard requesting authorization for take of marine mammals incidental to construction activities related to maintenance and repair at eight Coast Guard facilities in Alaska. On November 24, 2021 (86 FR 67023), we published a notice of receipt of the Coast Guard's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received no public comments. After the applicant responded to our questions and redrafted the application, we determined the application was adequate and complete on January 19, 2022. On August 12, 2022, the Coast Guard submitted a minor modification to their application (to include vibratory driving of composite piles as part of the specified activity).

The Coast Guard proposes to conduct construction necessary for maintenance and repair of existing in-water structures at the following eight Coast Guard station facilities in Alaska: Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and Seward. These repairs would include installation and removal of steel, concrete, and timber piles, involving use of impact and vibratory hammers and Down-The-Hole drilling (DTH) equipment, and removal of piles by cutting, clipping, or vibration. Maintenance activities may also include underwater power washing. Up to 245 piles will be removed and replaced on a 1 to 1 basis (*i.e.,* total pile numbers at these facilities are expected to remain the same) over the 5-year period of effectiveness for the regulations. Hereafter (unless otherwise specified or detailed) we use the term ''pile driving'' to refer to both pile installation and pile removal. The use of vibratory, DTH, and impact pile driving equipment expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals.

The Coast Guard requests authorization to take individuals of 14 species by Level B harassment and, for an additional 3 species (harbor seal, harbor porpoise, and Dall's porpoise), by Level A harassment. The proposed regulations would be valid for 5 years (2023–2028).

Description of the Specified Activity

Overview

Maintaining existing wharfs and piers is vital to sustaining the Coast Guard's mission and ensuring readiness. To ensure continuance of necessary missions at the eight facilities, the Coast Guard must conduct annual maintenance and repair activities at existing marine waterfront structures, including removal and replacement or repair of piles of various types and sizes. Exact timing and amount of necessary in-water work is unknown, but the Coast Guard estimates replacing up to 245 structurally unsound piles over the 5-year period, including individual actions currently planned and estimates for future marine structure repairs. Construction will include use of impact, DTH, and vibratory pile driving, including removal and installation of steel, concrete, composite, and timber piles. Pile removal may occur by various cutting or clipping methods and power washing may occur on some piles being repaired. Pile cutting, clipping, and power washing, and certain other activities (*e.g.,* deck repair, moving of rip-rap, *etc.*) are not anticipated to have the potential to result in incidental take of marine mammals because they are either above water, do not last for sufficient duration to present the reasonable potential for disruption of behavioral patterns, do not produce sound levels with likely potential to result in marine mammal harassment, or some combination of the above.

The Coast Guard's inspection program prioritizes deficiencies in marine structures and plans those maintenance and repairs for design and construction. The Coast Guard's proposed activities include individual projects (where an existing need has been identified) and estimates for ongoing repairs. Estimates of activity levels for ongoing repairs are based on Coast Guard surveys of existing structures, which provide assessments of structure condition and estimates of numbers of particular pile types that may require replacement (at an assumed 1:1 ratio) over the 5-year duration of these proposed regulations. Additional allowance is made for the likelihood that future waterfront inspections will reveal unexpected damage, or that damage caused by severe weather events and/or incidents caused by vessels will result in need for additional contingency repairs. This regional programmatic approach to MMPA compliance is expected to allow for efficient compliance for the Coast Guard, while satisfying the requirements of the MMPA. The detailed discussion of planned or anticipated projects provided here and in the Coast Guard's application allow for more comprehensive analysis, while providing a reduction in the time and effort that could be required to obtain individual incidental take authorizations. LOAs could be issued for projects conducted at any or all of the eight facilities if they fit within the structure of the programmatic analysis provided herein and are able to meet the requirements described in the regulations.

The Coast Guard would report to NMFS on an annual basis prior to the start of in-water work windows to review results of relevant projects conducted in the preceding in-water work window and propose upcoming projects. The intent is to utilize lessons learned to better inform potential effects of future activities through adaptive management.

Dates and Duration

The proposed regulations would be valid for a period of 5 years from the date of issuance. The specified activities may occur at any time during the 5-year period of validity of the proposed regulations, subject to existing timing restrictions. These timing restrictions, or in-water work windows, are designed to protect fish species listed under the Endangered Species Act (ESA) as well as marine mammals under the MMPA. No work would occur outside these work windows unless necessary for the safety and stability of the structure. Work windows for the eight facilities are described in Table 1. Pile driving could occur on any day within in-water work windows during the period of validity of these proposed regulations.

TABLE 1—IN-WATER WORK WINDOWS FOR EACH FACILITY

Facility	Period of no in-water work	Notes
Kodiak	May 1–June 30	pink salmon fry and coho salmon smolts.
Sitka	March 1–October 1	herring spawning and summer prey feeding.
Ketchikan	April 1–June 30	outmigrating juvenile salmon.
Valdez	March 1–October 1	herring spawning and summer prey feeding, whale presence, Steller sea lion breeding.
Cordova	March 1–October 1	herring spawning and summer prey feeding, whale presence, Steller sea lion breeding.
Juneau	May 1–June 30	pink and chum salmon fry and coho and Chinook salmon smolt, hatchery net pen species.
Petersburg	April 1–June 30	outmigrating juvenile salmon.
Seward	May 1–June 30	pink salmon fry and coho salmon smolts.

For many projects the design details are not known in advance; thus, it is not possible to state the exact number of pile driving days that will be required. Days of pile driving at each site were based on the estimated work days using a slow production rate, *i.e.,* one pile removed per day and one pile installed per day. These conservative rates give the following estimates of total days at each facility over the 5-year duration: Kodiak: 100 days, Sitka: 50 days, Ketchikan: 100 days, Valdez: 15 days, Cordova: 6 days, Juneau: 100 days, Petersburg: 20 days, and Seward: 4 days. These totals include both removal and installation of piles, and represent a conservative estimate of pile driving days at each facility. In a real construction situation, pile driving production rates would be maximized when possible and actual daily production rates may be higher, resulting in fewer actual pile driving days.

Specified Geographical Region

The eight facilities are located within the coastal waters of the Gulf of Alaska (Figure 1). For full details regarding the facilities and specified geographical region, please see sections 1.3 and 2, respectively, of the Coast Guard's application.

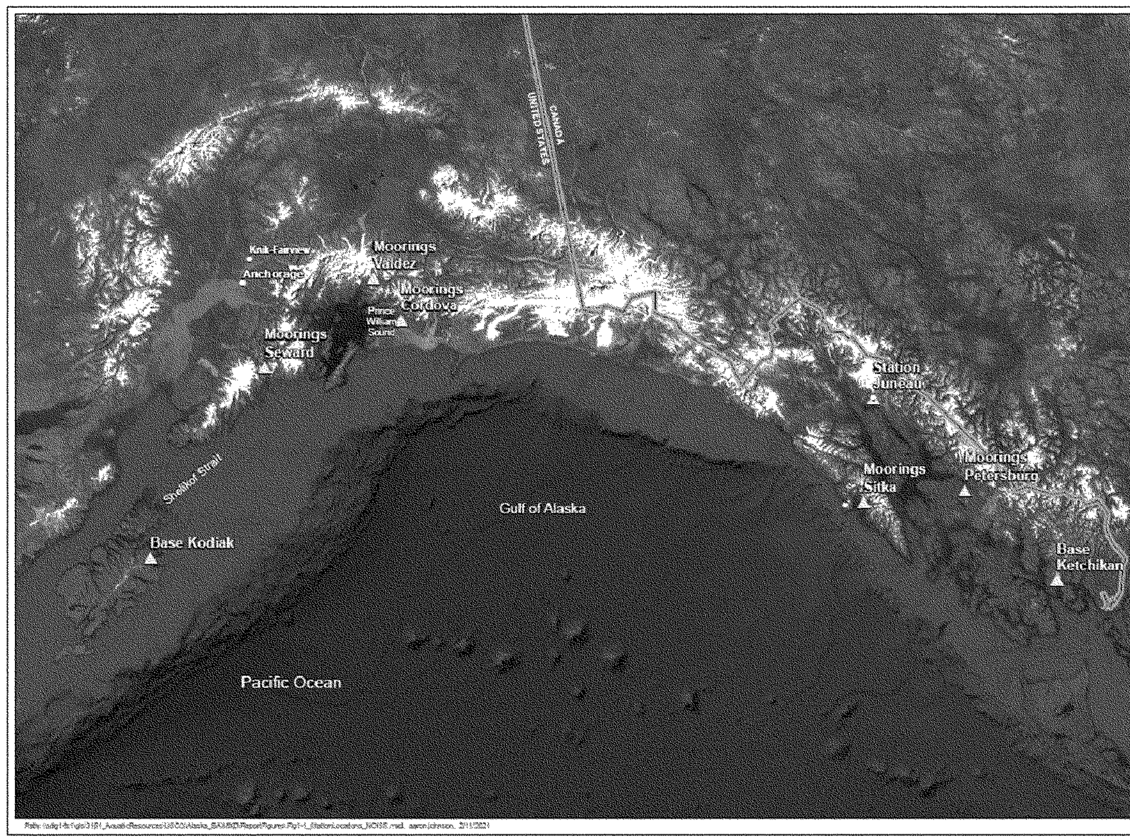

Figure 1—Location of the Eight Facilities

Coast Guard Base Kodiak is located on Womens Bay, a largely enclosed arm of the larger Chiniak Bay on the northeast side of Kodiak Island, Alaska's largest island. Womens Bay is separated from the rest of Chiniak Bay by Nyman Peninsula providing a protected harbor for Coast Guard vessels. Coast Guard vessels are the primary users of Womens Bay; however, a sea plane runway is present at the mouth of the bay and barges regularly transit Womens Bay.

Two of the three piers (the Fuel Pier and Cargo Wharf) at Base Kodiak need periodic maintenance and repair, while the Marginal Wharf is currently being evaluated for demolition. Any actions related to the Marginal Wharf would occur under a separate action. Because there is the potential for contaminated sediments at this location, no pressure washing will occur.

The Coast Guard's Sitka Moorings are located near Sitka Harbor on the Sitka Channel separating Japonski Island from the larger Baranof Island. The Sitka Channel connects the Eastern Anchorage southeast of Sitka to the Western Anchorage northwest of the town. Beyond Coast Guard vessels, typical vessel traffic within the Sitka Channel includes private watercraft, commercial fishing vessels, and seaplanes.

Base Ketchikan is situated on Revillagigedo Island, which is separated from nearby Pennock Island by the East Channel of the Tongass Narrows. At Base Ketchikan, the Tongass Narrows are approximately 2,000 ft (610 meters (m)) across with steep surface bathymetry reaching a maximum mid-channel depth of over 100 ft (30 m). The Tongass Narrows are a busy passage frequented by private and commercial vehicles, including large cruise ships servicing the cruise terminal in Ketchikan (north of Base Ketchikan).

The Coast Guard's Valdez moorings are located west of the entrance to Valdez Harbor located on Port Valdez, itself part of the Valdez Arm of Prince William Sound. Port Valdez is the U.S.' northernmost ice-free port and non-Coast Guard vessel traffic in the immediate vicinity of the Valdez moorings includes private craft and commercial cargo vessels. The Valdez Marine Terminal is located 2.3 miles (3.7 kilometers (km)) south of the Valdez moorings and is the offshoring point for petroleum products transported via the Trans-Alaska Pipeline, with corresponding oil tanker traffic through the area. Depths adjacent to the Valdez moorings fall off steeply from approximately 13 ft (4 m) at the entrance to Valdez Harbor to over 600 ft (183 m) along the centerline of the Valdez Arm.

The dock used by the Coast Guard at Cordova is owned by the City of Cordova and is located on the Cordova waterfront on Orca Inlet, which separates the mainland from Hawkins Island. Orca Inlet is generally shallow reaching depths of 75 ft (23 m) at the deepest parts of the channel with significantly more shallow depths closer to Hawkins and Observation Islands.

The Coast Guard wharf at Station Juneau is on the southeast facing portion of the Juneau waterfront on the Gastineau Channel separating the North American mainland (Juneau) from Douglas Island. The Gastineau Channel is accessible to large vessels up to the bridge linking Douglas Island to the mainland and navigable by smaller vessels for its entire length. The Channel is generally shallow in the northern section but up to 35 ft (10.7 m) deep adjacent to the wharf frontage and up to 100 ft (30 m) in the mid-channel south of Station Juneau.

The Coast Guard moorings in Petersburg are located within Petersburg Harbor, which supports the area's commercial fishing industry. Petersburg is located at the northern end of the Wrangell Narrows separating Mitkof and Kupreanof Islands near the confluence with the Frederick Sound. The Narrows are generally only used by fishing boats and Alaska Marine Highway ferries as it is too shallow and narrow for use by larger vessels. Depths adjacent to the Petersburg Moorings are approximately 20 ft (6 m).

The dock used by the Coast Guard in Seward is owned by the City of Seward and is located within Seward Harbor. The Seward Harbor breakwaters separate the harbor and moorings from the main body of Resurrection Bay. Seward Harbor itself serves smaller craft, with larger cruise ships and ferries using facilities just east of the harbor. Depths within the harbor, including the harbor entrance, range between 12 and 15 ft (4–5 m).

Detailed Description of Activities

As described above, the Coast Guard has requested incidental take regulations for its maintenance and repair program, which includes maintenance and repair activities at marine waterfront structures at eight facilities within the Gulf of Alaska. In order to address identified deficiencies in existing marine structures at the 8 facilities, the Coast Guard proposes to replace up to 245 structurally unsound piles over the 5-year period using methods including impact and vibratory pile driving, and DTH to make holes. Existing marine structures at the eight facilities are described in detail in section 6.8 of the Coast Guard's application and details of pile maintenance and repair activity are summarized in Table 2.

TABLE 2—IN-WATER MAINTENANCE ACTIVITY FOR EACH COAST GUARD FACILITY

Facility	Number and material of pile replacements					
	Year 1	Year 2	Year 3	Year 4	Year 5	Maximum total
Kodiak	20 timber* or steel	20 timber* or steel	20 timber* or steel	20 timber* or steel	20 timber* or steel	100.
Sitka**	Replace 5 piles	Replace 5 piles	Replace 5 piles	Replace 5 piles	Replace 5 piles	25 piles replaced.
Ketchikan**	Replace 10–15 timber* piles.	Replace 10–15 timber* piles.	Replace 10–15 timber* piles.	Replace 10–15 timber* piles.	Replace 10–15 timber* piles.	50 piles replaced.
Valdez**	Replace 1 timber* pile	Replace 1 timber* pile	Replace 1 timber* pile	Replace 1 timber* pile, replace 1 steel guide pile.	Replace 1 timber* pile	6 piles replaced.
Cordova		Replace 3 steel piles				3 piles replaced.
Juneau**	Replace 10 timber* piles.	Replace 10 timber* piles.	Replace 10 timber* piles.	Replace 10 timber* piles.	Replace 10 timber* piles.	50 piles replaced.
Petersburg**	Replace 2 fender piles	Replace 2 fender piles	Replace 2 fender piles	Replace 2 fender piles	Replace 2 fender piles	10 fender piles replaced.
Seward			Replace 1 steel pile			1 pile replaced.
Total Replaced	53	56	53	54	52	245 piles replaced.***

* Timber piles will be preferentially replaced with composite piles where technically possible.
** These facilities will also conduct pile repairs; see text for full description of repair methods.
*** Yearly pile numbers may add up to be larger than the number reported here to allow for flexibility between years. Piles replaced may not exceed yearly maximum totals.

The project includes pile repair, extraction, and installation, all of which may be accomplished through a variety of methods. However, only extraction and installation using DTH equipment and vibratory and impact pile drivers

are expected to have the potential to result in incidental take of marine mammals. Pile repair methods include sleeve or jacket replacement, pressure washing, rub strip and ladder replacement, wrapping, pile encapsulation, painting, coating, and replacement of treated wood decking. These processes do not involve pile driving or long durations of other loud sound sources and are not expected to have the potential to result in incidental take of marine mammals. Pile removal may be accomplished via mechanical methods such as clipping, clamshell removal, or direct pull. Noise levels produced through these activities are not expected to exceed baseline levels produced by other routine activities and operations at the eight facilities, and any elevated noise levels produced through these activities are expected to produce intermittent (and generally continuous) noise, be of short duration, or of low peak values. Therefore, only DTH, vibratory, and impact pile driving are carried forward for further analysis.

Vibratory hammers, which can be used to either install or extract a pile, contain a system of counter-rotating eccentric weights powered by hydraulic motors, and are designed in such a way that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The pile driving machine is lifted and positioned over the pile by means of an excavator or crane, and is fastened to the pile by a clamp and/or bolts. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground using the weight of the pile plus the hammer.

Impact hammers use a rising and falling piston to repeatedly strike a pile and drive it into the ground. Steam, hydraulic and pneumatic hammers use compressed fluids to create the force to raise or drive a piston weight. A diesel hammer works much like a car engine with fuel injected into a combustion chamber where the fuel is then ignited and the force of the explosion drives a piston, which pushes the pile down with great force.

DTH systems create holes by combining impact forces from a hydraulically or pneumatically controlled piston and hammer that directly impact the substrate along with a rotating drill function, aided by an intricate series of rock cutting bits on the end of the hammer.

Steel piles are typically vibratory-driven for their initial embedment depths or to refusal and finished with an impact hammer for proofing or until the pile meets structural requirements, as necessary. Where structural requirements necessitate stronger support piles may need to be driven into bedrock substrates. DTH systems are used for this purpose. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Non-steel piles (concrete, timber, composite) are typically impact-driven for their entire embedment depth, in part because non-steel piles are often displacement piles (as opposed to pipe piles) and require some impact to allow substrate penetration. Pile installation can range from under one minute to 60 minutes depending on pile type, pile size, and conditions (*i.e.,* bedrock, loose soils, etc.) to reach the required tip elevation. DTH can typically take multiple hours depending on the equipment, rock hardness, and required hole depth, though the process is dynamic and driving is not continuous.

The most effective and efficient method of pile driving available would be implemented in each case. The method fitting these criteria may vary based on specific project requirements and local conditions. Impact driving, while generally producing higher levels of sound, also minimizes the net amount of active driving time, thus reducing the amount of time during which marine mammals may be exposed to noise. Impact, DTH, or vibratory pile driving could occur on any day but would not occur simultaneously. Location-specific pile totals are given in Table 2 and described below. These totals assume a 1:1 replacement ratio; however, the actual number installed may result in a replacement ratio of less than 1:1.

Steel, concrete, timber, and composite piles will all be a maximum of 24-inch (0.61 m) diameter. For purposes of analysis, it is assumed that any unknown pile type would be steel, since this would give a worst-case scenario in terms of loudest noise levels produced. All concrete, composite, and timber piles are assumed to be installed entirely by impact pile driver, and all steel piles are assumed to require some use of an impact driver. This is a conservative assumption, as all steel piles would be initially driven with a vibratory driver until they reach a point of refusal (where substrate conditions make use of a vibratory hammer ineffective) or engineering specifications require impact driving to verify load-bearing capacity. Therefore, some steel piles may not in fact require use of the impact driver during installation. DTH will only be used at Ketchikan and Kodiak.

At this time, of the 245 piles expected to be extracted, 5 have been identified as steel piles (3 at Cordova, 1 each at Seward and Valdez) and 106 as timber piles (50 each at Ketchikan and Juneau, 5 at Valdez, and 1 at Seward). The remaining piles have not been identified to type and so for analysis will be considered to be steel, typically the loudest type. Replacement will often be of the same type, but could include different materials, though diameters will generally be the same. Replacements for extracted timber piles will typically be composite piles of similar diameter.

Pile driving could occur on any work day within in-water work windows during the period of validity of these proposed regulations. Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed the Coast Guard's species descriptions that summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species, for accuracy and completeness and refer the reader to Sections 3 and 4 of the application, instead of reprinting all of the information here. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for this action and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS' SARs).

While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in the specified geographical regions are assessed in either NMFS' U.S. Alaska SARs or U.S. Pacific SARs. All values presented in Table 3 are the most recent available at the time of writing and are available in the draft 2022 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock*).

TABLE 3—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016)	801	131
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-, -, Y	10,103 (0.30, 7,891, 2006)	83	26
		Western North Pacific	E, D, Y	1,107, (0.30, 865, 2006)	3	2.8
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	UND (UND, UND, 2013)	UND	0.6
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, -, N	N/A (N/A, N/A, N/A) [4]	UND	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (N/A, 1,920, 2009)	19	1.3
		Eastern North Pacific Gulf of Alaska, Aleutian Islands, Bearing Sea Transient.	-, -, N	587 (N/A, 587, 2012)	5.9	0.8
		Eastern North Pacific Northern Resident.	-, -, N	302 (N/A, 302, 2018)	2.2	0.2
		AT1 Transient	-, D, Y	7 (N/A, 7, 2019)	0.1	0
		West Coast Transient	-, -, N	349 (N/A, 349, 2018)	3.5	0.4
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (UND, UND, 1990)	UND	0
Family Phocoenidae (porpoises):						
Dall's porpoise [5]	*Phocoenoides dalli*	Alaska	-, -, N	UND (UND, UND, 2015)	UND	37
Harbor porpoise [6]	*Phocoena phocoena*	Southeast Alaska	-, -, Y	1,302 (0.21, 1,057, 2019)	11	34
		Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	>321
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	-, D, Y	626,618 (0.2, 530,376, 2019)	11,403	373
Steller sea lion	*Eumetopias jubatus*	Eastern	-,-, N	43,201 (N/A, 43,201, 2017)	2,592	112
	Eumetopias jubatus	Western	E, D, Y	52,932 (N/A, 52,932, 2019)	318	254
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Prince William Sound	-, -, N	44,756 (N/A, 41,776, 2015)	1,253	413
		Lynn Canal/Stephens Passage.	-, -, N	13,388 (N/A, 11,867, 2016)	214	50
		Sitka/Chatham Straight	-, -, N	13,289 (N/A, 11,883, 2015)	356	77
		Clarence Strait	-, -, N	27,659 (N/A, 24,854, 2015)	746	40
		South Kodiak	-, -, N	26,448 (N/A, 22,351, 2017)	939	127

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N/A). UND indicates data unavailable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] No population estimates have been made for the number of minke whales in the entire North Pacific. Some information is available on the numbers of minke whales in some areas of Alaska, but in the 2009, 2013, and 2015 offshore surveys, so few minke whales were seen during the surveys that a population estimate for the species in this area could not be determined (Rone *et al.,* 2017). Therefore, this information is N/A (not available).

[5] Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated Nmin and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

[6] Abundance estimates assumed that detection probability on the trackline was perfect; work is underway on a corrected estimate. Additionally, preliminary data results based on environmental DNA analysis show genetic differentiation between harbor porpoise in the northern and southern regions on the inland waters of southeast Alaska. Geographic delineation is not yet known. Data to evaluate population structure for harbor porpoise in Southeast Alaska have been collected and are currently being analyzed. Should the analysis identify different population structure than is currently reflected in the Alaska SARs, NMFS will consider how to best revise stock designations in the future.

Twelve species (with 23 managed stocks) are considered to have the potential to co-occur with Coast Guard activities to the degree that take is likely to occur. Table 4 identifies which stocks are expected to occur near each of the Coast Guard facilities. There are several species or stocks that occur in Gulf of Alaska waters, but which are not expected to occur in the vicinity of any of the eight Coast Guard facilities. In addition, the sea otter is found in coastal waters. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

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Table 4 -- Species and Critical Habitat[1] Occurrence by Each Project Facility

Species	*Occurrence by Installation*							
	Kodiak	*Sitka*	*Ketchikan*	*Seward*	*Valdez*	*Cordova*	*Juneau*	*Petersburg*
Steller Sea Lion								
Eastern Stock		X	X				X	X
Western Stock	X	X		X	X	X	X	X
Western DPS – Critical Habitat	X					X		
Northern Fur Seal								
Eastern North Pacific Stock	X	X		X	X	X		
California Sea Lion								
U.S. Stock		X					X	
Harbor Seal								
Prince William Sound Stock				X	X	X		
Lynn Canal/Stephens Passage Stock							X	
Sitka/Chatham Strait Stock		X						
Clarence Strait Stock			X					X
South Kodiak	X							
Killer Whale								
Alaska Resident Stock	X	X	X	X	X	X	X	X
Northern Resident		X	X				X	X
Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock	X	X		X	X	X		
AT1 Transient Stock				X	X	X		
West Coast Transient Stock		X	X				X	X
Pacific White-Sided Dolphin								
North Pacific Stock	X	X	X	X	X	X	X	X
Harbor Porpoise								
Southeast Alaska Stock		X	X				X	X
Gulf of Alaska Stock	X			X	X	X		
Dall's Porpoise								
Alaska Stock	X	X	X	X	X	X	X	X
Humpback Whale								
Western North Pacific Stock	X			X				
Central North Pacific Stock	X	X	X	X	X	X	X	X
Western North Pacific DPS and Mexico DPS – Critical Habitat	X							
Gray Whale								
Eastern North Pacific	X	X	X					
Fin Whale								
Northeast Pacific Stock	X	X	X		X	X		
Minke Whale								
Alaska Stock	X	X	X	X	X	X	X	X

[1] Critical Habitat is designated under the Endangered Species Act, and defined as specific areas within the geographical area occupied by the species at the time of listing that contain physical or biological features essential to conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the species if the agency determines that the area itself is essential for conservation. Designated critical habitat for Western Distinct Population Segment (DPS) of Steller sea lion may be viewed at: *https://www.fisheries.noaa.gov/resource/map/steller-sea-lion-western-dps-critical-habitat-map-and-gis-data* and designated critical habitat Western North Pacific and Mexico DPSs of Humpback Whales may be viewed at: *https://www.fisheries.noaa.gov/resource/map/humpback-whale-critical-habitat-maps-and-gis-data*.

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As indicated above, all 12 species (and 23 managed stocks) in Table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it. While Cuvier's beaked whales have been reported near all eight project areas, the spatial occurrence of this species generally offshore in deep water is such that take is not expected to occur, and it is not discussed further beyond the explanation provided here.

Gray Whale

Gray whales occur exclusively in the North Pacific Ocean. The Eastern North Pacific stock of gray whales inhabit California and Mexico in the winter months, and the Chukchi, Beaufort, and Bering Seas in northern Alaska in the summer and fall. Gray whales have also been observed feeding in waters off Southeast Alaska during the summer (NMFS, 2022). The migration pattern of gray whales appears to follow a route along the western coast of Southeast Alaska, traveling northward from British Columbia through Hecate Strait and Dixon Entrance, passing the west coast of Baranof Island from late March to May and then return south in October and November (Jones *et al.,* 1984, Ford *et al.,* 2012).

Two populations of gray whales are recognized, the eastern and a western North Pacific (ENP and WNP). WNP whales are known to feed in the Okhotsk Sea and off of Kamchatka before migrating south to poorly known wintering grounds, possibly in the South China Sea. The two populations have historically been considered geographically isolated from each other; however, data from satellite-tracked whales indicate that there is some overlap between the stocks. Two WNP whales were tracked from Russian foraging areas along the Pacific rim to Baja California (Mate *et al.,* 2011), and, in one case where the satellite tag remained attached to the whale for a longer period, a WNP whale was tracked from Russia to Mexico and back again (IWC, 2012). Between 22–24 WNP whales are known to have occurred in the eastern Pacific through comparisons of ENP and WNP photo-identification catalogs (IWC, 2012; Weller *et al.,* 2011; Burdin *et al.,* 2011). Urban *et al.* (2013) compared catalogs of photo-identified individuals from Mexico with photographs of whales off Russia and reported a total of 21 matches. Therefore, a portion of the WNP population is assumed to migrate, at least in some years, to the eastern Pacific during the winter breeding season. However, it is extremely unlikely that a gray whale in close proximity to Coast Guard construction activity would be one of the few WNP whales that have been documented in the eastern Pacific. The likelihood that a WNP whale would be present in the vicinity of Coast Guard construction activities at all locations is insignificant and discountable, and WNP gray whales are omitted from further analysis.

Kodiak, Sitka, and Juneau are within a gray whale migratory corridor Biologically Important Area (BIA) (Ferguson *et al.,* 2015).

Humpback Whale

Humpback whales are the most commonly observed baleen whale in Alaska and have been observed in Southeast Alaska in all months of the year (Baker *et al.,* 1986). They undergo seasonal migration with more whales present in Alaska from spring until fall. There are two potential stocks of humpback whales that may occur in the project area: the Central North Pacific stock and the Western North Pacific stock. The Central North Pacific stock consists of winter/spring populations of the Hawaiian Islands and Mexico, which migrate primarily to northern British Columbia/Southeast Alaska, the Gulf of Alaska, and the Bering Sea/Aleutian Islands (Baker *et al.,* 1990; Perry *et al.,* 1990; Calambokidis *et al.,* 1997). The Western North Pacific stock consists of winter/spring populations off Asia, which migrate primarily to Russia and the Bering Sea/Aleutian Islands. Members of the Western North Pacific stock have the potential to occur at Base Kodiak and in the vicinity of Seward moorings, whereas members of the Central North Pacific stock have the potential to occur at any of the eight facilities.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 DPSs with different listing statuses (81 FR 62259, September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 3. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes.

Within Alaska waters, three current DPSs may occur: the Hawaii DPS (not listed), the Western North Pacific DPS (endangered), and the Mexico DPS (threatened). Humpback whales found in the project areas are predominantly members of the Hawaii DPS (98 percent probability in Southeast Alaska (Sitka, Ketchikan, Juneau, and Petersburg sites), 89 percent in the Gulf of Alaska (Kodiak, Seward, Valdez, and Cordova sites), and 91 percent in the Aleutian Islands), which is not listed under the ESA. However, based on a comprehensive photo-identification study, members of the Mexico DPS, which is listed as threatened, have a small potential to occur in all project locations (2 percent probability in Southeast Alaska, 11 percent in Gulf of Alaska, and 7 percent in the Aleutian Islands), and members of the Western North Pacific DPS have a small potential to occur in the Aleutian Islands (2 percent probability) and the Gulf of Alaska (1 percent probability) (Wade 2021).

On January 24, 2023, NMFS published the draft 2022 SARs (*https://*

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region). The Alaska and Pacific Ocean SARs include proposed updates to the humpback whale and harbor porpoise stock structures. The new humpback whale stock structure, if finalized, would modify the MMPA-designated stocks to align more closely with the ESA-designated DPSs. The new harbor porpoise stock structure, if finalized, would split the Southeast Alaska stock into three new stocks. Please refer to the draft 2022 Alaska (Young *et al.,* 2023) and Pacific Ocean SARs for additional information.

NMFS' Office of Protected Resources, Permits and Conservation Division has generally considered peer-reviewed data in draft SARs (relative to data provided in the most recent final SARs), when available, as the best available science, and has done so in this proposed rule for all species and stocks, with the exception of a new proposal to revise humpback whale and harbor porpoise stock structures. Given that the proposed changes involve application of NMFS' Guidance for Assessing Marine Mammals Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis in this proposed rule based on the status quo stock structure identified in the most recent final SARs (2021; Carretta *et al.,* 2022; Muto *et al.,* 2022).

Critical habitat was recently finalized for the humpback whale in Alaska (86 FR 21082, April 21, 2021). Designated critical habitat for the Western North Pacific and Mexico DPSs overlaps Kodiak Island; Cordova and Valdez are located near, but not within, critical habitat for the Mexico DPS. Kodiak, Sitka, Juneau, and Petersburg are within seasonal humpback whale feeding BIAs (Ferguson *et al.,* 2015).

Fin Whale

The fin whale is widely distributed in all the world's oceans (Gambell, 1985), but typically occurs in temperate and polar regions from 20–70° north and south of the Equator (Perry *et al.,* 1999). Fin whales occur in coastal, shelf, and oceanic waters. Sergeant (1977) suggested that fin whales tend to follow steep slope contours, either because they detect them readily or because biological productivity is high along steep contours because of mixing. Stafford *et al.* (2009) noted that sea-surface temperature is a good predictor variable for fin whale call detections in the North Pacific.

Fin whales appear to have complex seasonal movements and are seasonal migrants; they mate and calve in temperate waters during the winter and migrate to feed at northern latitudes during the summer (Gambell, 1985). The North Pacific population summers from the Chukchi Sea to California and winters from California southwards (Gambell, 1985). Aggregations of fin whales are found year-round off southern and central California (Dohl *et al.,* 1980, 1983; Forney *et al.,* 1995; Barlow, 1997) and in the summer off Oregon (Green *et al.,* 1992; Edwards *et al.,* 2015). Diet for the fin whale varies by location and availability, but includes primarily krill, large copepods, some small squid, and small schooling fish (Cooke, 2018). Much of foraging occurs in spring, summer, and fall, with fasting or minimal feeding occurring during winter. Fin whales are generally solitary but can also occur in groups of two to seven individuals. Larger aggregations are usually due to gatherings at concentrated food sources and individuals display no social bonds (Wiles, 2017). The project site in Kodiak is just outside the fin whale feeding BIA, which cuts off at the mouth of Chiniak Bay where Base Kodiak is located.

Minke Whale

Minke whales are found throughout the northern hemisphere in polar, temperate, and tropical waters. The International Whaling Commission has identified three minke whale stocks in the North Pacific: one near the Sea of Japan, a second in the rest of the western Pacific (west of 180° W), and a third, less concentrated stock throughout the eastern Pacific. NMFS further splits this third stock between Alaska whales and resident whales of California, Oregon, and Washington (Muto *et al.,* 2018). Minke whales are found in all Alaska waters, however no population estimates are currently available for the Alaska stock.

In Alaska, minke whales feed primarily on euphausiids and walleye pollock. Minke whales are generally found in shallow, coastal waters within 200 m (656 ft) of shore (Zerbini *et al.,* 2006). Dedicated surveys for cetaceans in southeast Alaska found that minke whales were scattered throughout inland waters from Glacier Bay and Icy Strait to Clarence Strait, with small concentrations near the entrance of Glacier Bay. Surveys took place in spring, summer, and fall, and minke whales were present in low numbers in all seasons and years (Dahlheim *et al.,* 2009). Additionally, minke whales were observed during the Biorka Island Dock Replacement Project at the mouth of Sitka Sound (Turnagain Marine Construction, 2018).

Killer Whale

Killer whales have been observed in all oceans, but the highest densities occur in colder and more productive waters found at high latitudes. Killer whales occur along the entire coast of Alaska (Braham and Dahlheim, 1982), inland waterways of British Columbia and Washington (Bigg *et al.,* 1990), and along the outer coasts of Washington, Oregon, and California (Green *et al.,* 1992; Barlow, 1995, 1997; Forney *et al.,* 1995). Eight stocks of killer whales are recognized within the Pacific U.S. Exclusive Economic Zone (Muto *et al.,* 2020). Of those, five stocks may be present in the project areas as follows: (1) Alaska Resident stock—All project locations; (2) AT1 Transient stock—Cordova, Valdez, and Seward; (3) Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock—Kodiak, Sitka, Valdez, Cordova, and Seward; (4) Northern Resident—Juneau, Sitka, Petersburg, and Ketchikan; and (5) West Coast Transient stock—Juneau, Sitka, Petersburg, and Ketchikan. Table 4 outlines where each stock is expected to overlap with each project location.

Transient killer whales hunt and feed primarily on marine mammals, including harbor seals, Dall's porpoises, harbor porpoises, and sea lions. Resident killer whale populations in the eastern North Pacific feed mainly on salmonids, showing a strong preference for Chinook salmon (Muto *et al.,* 2020).

The Alaska Resident stock occurs from southeast Alaska to the Aleutian Islands and Bering Sea. The Northern Resident stock occurs from Washington north through part of southeast Alaska. The Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock occurs from the northern British Columbia coast to the Aleutian Islands and Bering Sea. The AT1 Transient stock occurs only in Prince William Sound and in the Kenai Fjords region. The West Coast Transient stock occurs from California north through southeast Alaska (Muto *et al.,* 2020).

Dahlheim *et al.,* (2009) noted a 5.2 percent annual decline in transient killer whales observed in southeast Alaska between 1991 and 2007. Both resident and transient killer whales were observed in southeast Alaska during all seasons during surveys between 1991 and 2007, in a variety of habitats and in all major waterways, including Lynn Canal, Icy Strait, Stephens Passage, Frederick Sound, and upper Chatham Strait (Dahlheim *et al.,* 2009). There does not appear to be strong seasonal variation in abundance

or distribution of killer whales, but Dahlheim *et al.* (2009) observed substantial variability among different years.

Members of the fish-eating resident stocks are the most commonly seen in nearshore waters with members of the Alaska Resident stock having the potential to occur at any of the facilities while Northern Resident individuals have the potential to occur at all of the facilities except Base Ketchikan which is south of their expected range (Muto *et al.,* 2020). Transient killer whales of the Gulf of Alaska, Aleutian Islands, and Bering Sea stock have the potential to occur at all facilities except those facilities along the Inside Passage (*i.e.,* Base Ketchikan, Petersburg Moorings, and Station Juneau). Southeast Alaska is at the northern limit of the West Coast Transient stock and individuals of this population are only anticipated to appear at Station Sitka, Base Ketchikan, Station Juneau, and Petersburg Moorings.

Pacific White-Sided Dolphin

The Pacific white-sided dolphin is found in cool temperate waters of the North Pacific from the southern Gulf of California to Alaska. Across the North Pacific, it appears to have a relatively narrow distribution between 38° N and 47° N (Brownell *et al.,* 1999). In the eastern North Pacific Ocean, the Pacific white-sided dolphin is one of the most common cetacean species, occurring primarily in shelf and slope waters (Green *et al.,* 1993; Barlow 2003, 2010).

Results of aerial and shipboard surveys strongly suggest seasonal north-south movements of the species between California and Oregon/Washington; the movements apparently are related to oceanographic influences, particularly water temperature (Green *et al.,* 1993; Forney and Barlow, 1998; Buchanan *et al.,* 2001). During winter, this species is most abundant in California slope and offshore areas; as northern waters begin to warm in the spring, it appears to move north to slope and offshore waters off Oregon/Washington (Green *et al.,* 1992, 1993; Forney *et al.,* 1995; Buchanan *et al.,* 2001; Barlow 2003).

Pacific white-sided dolphins are highly gregarious with groups usually between 10 and 100 animals but ranging up to the thousands.

Dall's Porpoise

Dall's porpoise is found in temperate to subarctic waters of the North Pacific and adjacent seas (Jefferson *et al.,* 2015). It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (2500 m and greater) oceanic waters (Hall, 1979). It is probably the most abundant small cetacean in the North Pacific Ocean, and its abundance changes seasonally, likely in relation to water temperature (Becker, 2007). They occur in groups of up to 25 individuals and are expected to occur at all eight facilities.

Harbor Porpoise

Harbor porpoise are common in coastal waters. They frequently occur in coastal waters of southeast Alaska and are observed most frequently in waters less than 350 ft (107 m) deep (Dahlheim *et al.,* 2009). There are three harbor porpoise stocks in Alaska: (1) The Southeast Alaska stock occurs from Dixon Entrance to Cape Suckling, including inland waters; (2) The Gulf of Alaska stock occurs from Cape Suckling to Unimak Pass; and (3) The Bering Sea stock occurs throughout the Aleutian Islands and all waters north of Unimak Pass (Muto *et al.,* 2021). Only the Southeast Alaska stock and the Gulf of Alaska stock are expected to be encountered throughout all project sites. The Southeast Alaska stock's range includes the Sitka, Ketchikan, Juneau, and Petersburg facilities, while the Gulf of Alaska stock range includes the Kodiak, Valdez, Seward, and Cordova facilities.

California Sea Lion

The primary range of the California sea lion includes the coastal areas and offshore islands of the eastern North Pacific Ocean from British Columbia to central Mexico, including the Gulf of California (Jefferson *et al.,* 2015). However, its distribution is expanding (Jefferson *et al.,* 2015), and its secondary range extends into the Gulf of Alaska (Maniscalco *et al.,* 2004) and southern Mexico (Gallo-Reynoso and Solórzano-Velasco, 1991).

In California and Baja California, births occur on land from mid-May to late-June. During August and September, after the mating season, the adult males migrate northward to feeding areas (Lowry *et al.,* 1992). They remain there until spring (March-May), when they migrate back to the breeding colonies (Lowry *et al.,* 1992; Weise *et al.,* 2006). The distribution of immature California sea lions is less well known but some make northward migrations that are shorter in length than the migrations of adult males (Huber, 1991). However, most immature seals are presumed to remain near the rookeries for most of the year, as are females and pups (Lowry *et al.,* 1992).

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan (Jefferson *et al.,* 2015). The worldwide population of northern fur seals has declined substantially from 1.8 million animals in the 1950s (Muto *et al.,* 2020). They were subjected to large-scale harvests on the Pribilof Islands to supply a lucrative fur trade. Two stocks are recognized in U.S. waters: The Eastern North Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Carretta *et al.,* 2020; Muto *et al.,* 2020). Abundance of the Eastern Pacific Stock has been decreasing at the Pribilof Islands since the 1940s and increasing on Bogoslof Island. The northern fur seal population appears to be greatly affected by El Niño events.

Most northern fur seals are highly migratory. During the breeding season, most of the world's population of northern fur seals occurs on the Pribilof and Bogoslof islands (NMFS 2007). The main breeding season is in July (Gentry, 2009). Adult males usually occur onshore from May to August, though some may be present until November; females are usually found ashore from June to November (Muto *et al.,* 2020). Nearly all fur seals from the Pribilof Island rookeries are foraging at sea from fall through late spring. In November, females and pups leave the Pribilof Islands and migrate through the Gulf of Alaska to feeding areas primarily off the coasts of British Columbia, Washington, Oregon, and California before migrating north again to the rookeries in spring (Ream *et al.,* 2005; Pelland *et al.,* 2014). Immature seals can remain at sea in southern foraging areas year-round until they are old enough to mate (Muto *et al.,* 2022). Adult males migrate only as far south as the Gulf of Alaska or to the west off the Kuril Islands (Kajimura, 1984).

The northern fur seal spends approximately 90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts (Gentry, 1981). The remainder of its life is spent on or near rookery islands or haulouts. While at sea, northern fur seals usually occur singly or in pairs, although larger groups can form in waters rich with prey (Antonelis and Fiscus, 1980; Gentry, 1981). Northern fur seals dive to relatively shallow depths to feed: 100–200 m for females, and <400 m for males (Gentry, 2009). Tagged adult female fur

seals were shown to remain within 200 km of the shelf break (Pelland *et al.,* 2014).

Steller Sea Lion

The Steller sea lion's range extends across the North Pacific Rim from northern Japan to California with areas of abundance in the Gulf of Alaska and Aleutian Islands (Muto *et al.,* 2020). In 1997, based on demographic and genetic dissimilarities, NMFS identified two DPSs of Steller sea lions under the ESA: a western DPS (western stock) and an eastern DPS (eastern stock). The western DPS breeds on rookeries located west of 144° W in Alaska and Russia, whereas the eastern DPS breeds on rookeries in southeast Alaska through California.

Movement occurs between the western and eastern DPS of Steller sea lions, and increasing numbers of individuals from the western DPS have been seen in Southeast Alaska in recent years (Muto *et al.,* 2020, Fritz *et al.,* 2016; DeMaster, 2014). This DPS-exchange is especially evident in the outer southeast coast of Alaska, including Sitka Sound. The distribution of marked animals (along with other demographic data) indicates that movements of Steller sea lions during the breeding season result in a small net annual movement of animals from southeast Alaska (eastern DPS) to the western DPS (approximately 80 sea lions total) but a much larger inter-regional movement between the western DPS and the eastern DPS (approximately 1,000 sea lions per year; Fritz *et al.,* 2016). Hastings *et al.* (2020) indicates that the eastern population is increasing while the western population is decreasing, influencing mixing of both populations at new rookeries in northern southeast Alaska. They estimate 38 percent and 13 percent of animals in the northern outer coast from the Glacier Bay and Lynn Canal in southeast Alaska carry genetic information unique to the western population.

Critical habitat has been defined in Alaska at major haulouts and major rookeries (50 CFR 226.202), but the project action areas do not overlap with Steller sea lion critical habitat. Additionally, no in-water work will occur from March 1 through October 1 at Valdez and Cordova to avoid overlap with Steller sea lion breeding season.

Harbor Seal

Harbor seals are common in the coastal and inside waters of the project areas. Harbor seals in Alaska are typically non-migratory with local movements attributed to factors such as prey availability, weather, and reproduction (Scheffer and Slipp, 1944; Fisher, 1952; Bigg 1969, 1981; Hastings *et al.,* 2004). Harbor seals haul out of the water periodically to rest, give birth, and nurse their pups. According to the NMFS Alaska Fisheries Science Center (AFSC, 2021) there is one haulout near Valdez (HG08A), and one near Cordova (GG08D) that are within direct line of sight and that could be exposed in larger Level B harassment zones (see below).

There are 12 stocks of harbor seals in Alaska, 5 of which occur in the project areas: (1) the South Kodiak stock ranges from Middle Cape on the west coast of Kodiak Island southwest to Chirikof Island and east along the south coast of Kodiak Island to Spruce Island; (2) the Prince William Sound stock ranges from Elizabeth Island off the southwest tip of the Kenai Peninsula to Cape Fairweather; (3) the Lynn Canal/Stephens Passage stock ranges north along the east and north coast of Admiralty Island from the north end of Kupreanof Island through Lynn Canal; (4) the Sitka/Chatham Strait stock ranges from Cape Bingham south to Cape Ommaney, extending inland to Table Bay on the west side of Kuiu Island and north through Chatham Strait to Cube Point off the west coast of Admiralty Island, and as far east as Cape Bendel on the northeast tip of Kupreanof Island; and (5) the Clarence Strait stock ranges along the east coast of Prince of Wales Island from Cape Chacon north through Clarence Strait to Point Baker and along the east coast of Mitkof and Kupreanof Islands north to Bay Point.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' The only currently ongoing UME investigation involves gray whales (*https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2021-gray-whale-unusual-mortality-event-along-west-coast-and*. Beginning in early 2019, elevated strandings were observed along the west coast, with the majority of strandings in Alaska. Findings to date indicate that the whales are often emaciated but a cause of the UME has not been determined.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with an exception for lower limits for low-frequency cetaceans where the result was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 5.

TABLE 5—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*)..	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 5—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Please refer to Table 3.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

In the following discussion, we provide general background information on sound before considering potential effects to marine mammals from sound produced by pile driving.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, DTH, pile cutting, and power washing. Of these sounds, pile cutting and power washing are not expected to cause take of marine mammals and are thus not addressed further. The sounds produced by these activities fall into one of two general sound types: intermittent impulsive and continuous, non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). As regards the temporal aspect of these sound types, impulsive sounds are inherently intermittent, while non-impulsive sounds may be intermittent or continuous. Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, pile cutting, power washing, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of pile hammers would be used on this project: impact, vibratory, and DTH. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Rock or tension anchoring would be conducted using a DTH hammer. A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill in concert with a hammering pulse mechanism operated by a pneumatic (or sometimes hydraulic) component

integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). Rock anchoring or socketing involves using DTH equipment to create a hole in the bedrock inside which the pile is placed to give it lateral and longitudinal strength. Tension anchoring involves creating a smaller hole below the bottom of a pile. A length of rebar is typically inserted in the small hole and is long enough to run up through the middle of a hollow pile to reach the surface where it is connected to the pile to provide additional mechanical support and stability to the pile. The sounds produced by DTH systems contain both a continuous, non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, NMFS treats DTH systems as both impulsive (for estimating Level A harassment zones) and non-impulsive (for estimating Level B harassment zones) sound source types simultaneously.

The likely or possible impacts of the Coast Guard's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from DTH and pile driving is the primary means by which marine mammals may be harassed from the Coast Guard's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward 1960; Kryter *et al.,* 1966; Miller 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), and California sea lions. These studies examine hearing thresholds measured in marine mammals before and after exposure to

intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, SELcum will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources. Nachtigall *et al.,* (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018).

Installing piles requires a combination of impact pile driving, vibratory pile driving, and DTH. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and drilling also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and DTH drilling) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the estimated Level B harassment zone during pile driving or drilling. Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoises were also observed within the estimated Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to the Coast Guard's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and DTH projects in Alaska

have observed similar behaviors (for example, the Biorka Island Dock Replacement Project *https://www.fisheries.noaa.gov/action/incidental-take-authorization-faa-biorka-island-dock-replacement-project-sitka-ak*).

Airborne Acoustic Effects—Pinnipeds that occur near the project sites could be exposed to airborne sounds associated with pile driving or DTH that have the potential to cause behavioral harassment, depending on their distance from the activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project sites within the range of noise levels elevated above the airborne acoustic harassment criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when swimming with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds

such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking. Many of the Coast Guard facilities are in areas that contain active commercial shipping, fishing, cruise ship, and ferry operations, as well as numerous recreational and other commercial vessels; therefore, background sound levels in the areas are generally already elevated.

Marine Mammal Habitat Effects

The Coast Guard's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During construction activities, elevated levels of underwater noise would ensonify nearby areas where both fishes and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

In-water pile driving, cutting, and power washing activities would also cause short-term effects on water quality due to increased turbidity. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. The Coast Guard would employ other standard construction best management practices (see section 11 in the Coast Guard's application), thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the Gulf of Alaska. For a couple of facilities the ensonified area includes BIAs for feeding or migration for gray and/or humpback whales as well as critical habitats (see above). Kodiak and the distant areas around Cordova are included in the area designated as critical habitat for the Mexico DPS of humpback whales. Additionally, five haulout sites are located within 20 nautical miles (37 km) of Base Kodiak, the Seward Moorings, and of the Cordova Moorings. The planned activity is not anticipated to have any meaningful or lasting impacts to any of the aforementioned habitats of biological or critical importance, nor is it anticipated to significantly influence the behaviors of marine mammals in these habitats. Pile driving, power washing, and DTH may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. The Coast Guard must comply with state water quality standards during these operations. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). Any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving at the project sites would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving, washing, cutting or DTH stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The duration of the construction activities is relatively short. During each day, construction activities would generally only occur during daylight hours, with exceptions at the end of the work day to ensure safety of the site and construction personnel. Impacts to habitat and prey are expected to be minimal based on the short duration of activities and small size of affected areas, and the likelihood that the areas that are impacted are not of particular importance to marine mammals.

In-Water Construction Effects on Potential Prey (Fish)—Construction activities would produce continuous, non-impulsive (*i.e.,* vibratory pile driving, DTH) and intermittent impulsive (*i.e.,* impact driving and DTH) sounds. Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

SPLs of sufficient strength have been known to cause injury to fish and fish mortality (Dahl *et al.,* 2020). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Non-auditory injuries caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to explosions and during impact pile driving; however, the relationships between severity of injury and location

of the fish relative to the sound are not well understood (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013; Dahl *et al.,* 2020).

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Impulsive sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fish are temporary and include changes to behavior that return to baseline shortly after the noise-producing activity stops.

The most likely impact to fish from pile driving and DTH activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of the area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. There are times of known seasonal marine mammal foraging in the area of the facilities around fish processing/hatchery infrastructure or when fish are congregating, but the impacted areas are a small portion of the total foraging habitat available in the region. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project and the small project footprint.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid out-migratory routes in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 25 ft or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the region are routinely exposed to substantial levels of suspended sediment from glacial sources.

In-water work windows have been established to minimize the impacts of the proposed activity on sensitive life stages essential fish that are considered prey species for many marine mammals. Table 1 notes when periods of in-water work may not occur and at which facility.

In summary, given the short daily duration of sound associated with individual pile driving and DTH events and the relatively small areas being affected, pile driving and DTH activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level A or Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic sources. Based on the nature of the activity, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB referenced to 1 micropascal (re 1 μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, DTH) and

above 160 dB re 1 μPa (rms) for non-explosive impulsive, intermittent (*e.g.,* impact driving, DTH) sources.

The Coast Guard's proposed activity includes the use of continuous (vibratory, DTH) and impulsive (impact pile driving and DTH) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds, respectively, are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Coast Guard's proposed activity includes the use of impulsive (impact pile driving and DTH) and non-impulsive (vibratory, DTH) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW)(Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for the Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into estimating the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, and DTH).

The actual durations of each installation method vary depending on the type and size of the pile. In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes and equipment being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels (Table 7). Note that piles and holes of differing sizes have different sound source levels (SSLs). For simplicity and to be precautionary we analyze the largest pile diameter of each type (*e.g.,* 24-inch diameter) even though it is possible at some locations in some situations smaller pile diameters may be used or be removed.

TABLE 7—SOUND SOURCE LEVELS

Method and pile type	Sound source level at 10 meters (dB)	Literature source
Timber Vibratory	152 RMS	Greenbusch Group 2018.
24-inch Steel Pipe Vibratory	162 RMS	Laughlin 2010.
Timber Impact	170 RMS, 160 SEL, 180 Pk	CALTRANS 2015.
Composite impact	153 RMS, 145 SEL	CALTRANS 2020.
24-inch Steel Pipe Impact	190 RMS, 177 SEL, 203 Pk	CALTRANS 2015.
24-inch Concrete Impact	170 RMS, 159 SEL, 184 Pk	Mukilteo Terminal (WSDOT 2020).
DTH Non-impulsive component	167 RMS	Heyvaert & Reyff 2021.
24-inch DTH Impulsive component	159 SEL, 184 dB Pk	Heyvaert & Reyff 2021.

Note: It is assumed that noise levels during pile installation and removal are similar. SEL = single strike sound exposure level; peak = peak sound level; RMS = root mean square.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2),

where

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Coast Guard's proposed activity.

Using the practical spreading model, the Coast Guard determined underwater noise would fall below the behavioral effects thresholds of 120 dB rms or 160 dB rms for marine mammals at a maximum radial distances from 46 m for impact driving of timber or concrete piles to 13,594 m for DTH (Table 8). These distances determine the maximum Level B harassment zones for the project. It should be noted that based on the geography of many of the sites, sound will not reach the full distance of the Level B harassment isopleth. Generally, due to interaction with land, only a portion of the possible area is ensonified.

TABLE 8—CALCULATED DISTANCES TO LEVEL B HARASSMENT ISOPLETHS

Method and pile type	Level B isopleth (m)
Timber Vibratory	1,359
24-inch Steel Pipe Vibratory	6,310
Timber Impact	46
Composite Impact	3
24-inch Steel Pipe Impact	1000
24-inch Concrete Impact	46
DTH	13,594

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated three dimensional modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving or DTH, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS.

Inputs used in the User Spreadsheet (Table 9), and the resulting isopleths are reported below (Table 10). We analyzed scenarios with up to five piles per day to account for maximum possible production rates. Level A harassment thresholds for impulsive sound sources (impact pile driving and DTH) are defined for both SELcum and Peak SPL, with the threshold that results in the largest modeled isopleth for each marine mammal hearing group used to establish the Level A harassment isopleth. In this analysis, Level A harassment isopleths based on SELcum were always larger than those based on Peak SPL.

TABLE 9—INPUTS OF PILE DRIVING AND DTH ACTIVITY USED IN USER SPREADSHEET

Method and pile type	Weighting factor adjustment	Duration (minutes; vibratory) or strikes per pile (impact)	Piles per day
Timber Vibratory	2.5	50	5
24-inch Steel Pipe Vibratory	2.5	10	5
Timber Impact	2	100	5
Composite Impact	2	120	5
24-inch Steel Pipe Impact	2	400	1
24-inch Concrete Impact	2	184	5
24-inch DTH	2	60	2

Note: Data for all equipment types were for transmission loss of 15*log(r) and distance of source level measurements was 10 meters.

The above input scenarios lead to a PTS isopleth distance (Level A harassment threshold) of 0 to 517.1 m, depending on the marine mammal hearing group and scenario (Table 9).

TABLE 10—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS (m) DURING PILE INSTALLATION AND REMOVAL FOR EACH HEARING GROUP

Method and pile type	Low frequency	Mid frequency	High frequency	Phocid	Otariid
Timber Vibratory	1.5	0.1	2.2	0.9	0.1
24-inch Steel Pipe Vibratory	7.1	0.6	10.4	4.3	0.3
Timber Impact	18.4	0.7	21.9	9.9	0.7
Composite Impact	2.1	0.1	2.5	1.1	0.1
24-inch Steel Pipe Impact	215.8	7.7	257.1	115.5	8.4
24-inch Concrete Impact	27.7	1	33.0	14.8	1.1
24-inch DTH	434.1	15.4	517.1	232.2	16.9

Note: a minimum 20-m shutdown zone, as proposed by the Coast Guard, will be implemented for all species and activity types to prevent direct injury of marine mammals.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Available information regarding marine mammal occurrence and abundance in the vicinity of the eight facilities includes monitoring data from the NMFS Alaska Regional Office, prior incidental take authorizations, and ESA consultations on additional projects (Table 11). When local density information is not available, data aggregated in the Navy's Marine Mammal Species Density Database (U.S. Navy, 2019, 2020) for the Gulf of Alaska or Northwest Testing and Training areas (Table 12) or nearby proxies from the monitoring data are used; whichever gives the most precautionary take estimate was chosen.

Table 11—Marine Mammal Occurrence Data (per day) From Prior Projects

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Stock	Project Location					
	Ketchikan	Sitka	Seward	Juneau	Valdez	Kodiak
Gray whale	0.067	0.1	NA	NA	NA	NA
Humpback whale	0.571	5	1	4	NA	NA
Minke whale	0.024	1	NA	NA	0.25	NA
Killer whale	0.4	8	NA	NA	NA	NA
Pacific white-sided dolphin	2.86	NA	NA	NA	NA	NA
Dall's porpoise	2	NA	0.25	NA	NA	NA
Harbor porpoise	0.5	5	NA	NA	NA	NA
California sea lion	NA	1	NA	NA	NA	NA
Steller sea lion Eastern	10	15.6	NA	NA	NA	NA
Steller sea lion Western	NA	0.4	2	NA	4.2	0.083
Harbor seal Prince William Sound	NA	NA	NA	NA	48.95	NA
Harbor seal Lynn Canal/Stephens Passage	NA	NA	NA	43	NA	NA
Harbor seal Sitka/Chatham Straight	NA	23	NA	NA	NA	NA
Harbor seal Clarence Strait	12	NA	NA	NA	NA	NA

Note: NA indicates that occurrence data was not used for that species and site combination. Density data for species/site combinations listed as NA in this table are shown in Table 12.

TABLE 12—MARINE MAMMAL DENSITIES FROM NAVY DATA

Stock	Southeast Alaska facilities species density (#/km²) [1 2 3]	Gulf of Alaska/ Prince William Sound facilities species density (#/km²) [3 4 5]
Gray whale	0.016	0.048
Humpback whale Central North Pacific	0.002	0.093
Humpback Whale Western North Pacific [6]	N/A	0.093
Fin whale	0.0001	0.068
Minke whale	0.001	0.006
Killer whale (General)	N/A	0.005
Killer whale Resident	0.035	N/A
Killer whale Transient	0.006	N/A
Pacific white-sided dolphin	0.085	0.020
Dall's porpoise	0.121	0.218
Harbor porpoise	0.010	0.455
California sea lion [7]	0.025	0
Northern fur seal	0.276	0.090
Steller sea lion	0.316	0.068
Harbor seal	1.727	0.169

[1] Facilities including Ketchikan, Sitka, Juneau, and Petersburg.
[2] Southeast Alaska density values generally from Western Behm Canal values reported in U.S. Navy (2020).
[3] Where species density values reported in the U.S. Navy (2020) and U.S. Navy (2021) vary by time of year, the greatest value is presented here as a conservative estimate.
[4] Facilities including Kodiak, Seward, Valdez, and Cordova.
[5] Gulf of Alaska/Prince William Sound species density values generally from inshore or within the 500–1000 m isobath values reported in U.S. Navy (2021).
[6] The range for the Western North Pacific stock of humpback whales does not extend to Southeast Alaska.
[7] U.S. Navy 2020 density values for California sea lion do not include Western Behm Canal and the value used here is from the San Juan Islands, the next closest zone to the project area where a density value is available.

The data on abundance and occurrence from prior projects is derived from the following projects: (1) Kodiak—PSO monitoring reports from dock repair projects in 2018 and 2020 (NMFS Alaska Region). (2) Sitka—Data are from the Old Sitka Dock project (86 FR 22392, April 28, 2021). (3) Ketchikan—Data are from the Tongass Narrows project (85 FR 673, January 7, 2020) and other projects in preparation in the area. (4) Valdez—Data are from monitoring for an oil spill response in late April and early May 2020 (NMFS Alaska Region). (5) Juneau—Data are from the Erickson Dock project (84 FR 65360, November 27, 2019) and the Juneau Waterfront Improvement Project (85 FR 18562, April 2, 2020). (6) Seward—An IHA application for the Seward Passenger Terminal project recently received by NMFS included information resulting from consultation with the Alaska SeaLife Center, the Kenai Fjords NPS, local whale watching companies, and scientific literature to estimate the occurrence of marine mammals in Seward.

To quantitatively assess exposure of marine mammals to noise from pile driving and drilling activities when density estimates are most appropriate we used the density estimate and the annual anticipated number of work days for each activity (Table 2) at each facility to determine the number of animals potentially harassed on any one day of activity. The calculation is:

Exposure estimate = Density × harassment area × maximum days of activity

For example, exposure estimates at the Ketchikan site for gray whales were calculated by first finding the product of the SE Alaska species density (0.0155 animals/km²), the ensonified area for the activity (*e.g.,* 1.45 km² for vibratory pile driving of timber piles), for the anticipated number of days for that activity each year (10 days/year). After finding the product for each activity for each year, the values were summed to find the total number of takes for that species across all 5 years. This method was used for all species for which local occurrence data were not available.

When occurrence data from prior projects are the most appropriate data for exposure estimation, we used the occurrence estimate (number/unit of time) and the maximum work days (converted to the appropriate unit of time as needed) per year (Table 2) at each facility to determine the number of animals potentially exposed to an activity. The calculation is:

Exposure estimate = Occurrence/time × time of activity

And these values are then summed across activity/pile types.

When exposure estimates from density data are used for sites with no local occurrence data and the exposure estimate is less than a typical group size, we increase the estimated take based on that group size to account for the possibility a single group entering the project area would exceed authorized take. Table 13 shows the source of data used in exposure estimates.

The size of the Level B harassment zones for each facility and activity are in Table 14. Level A harassment take is only proposed for the activities creating the largest Level A harassment zones: DTH and impact driving of steel pipe piles (see Figures 6–2 through Figure 6–9 in the Coast Guard's application), and for species that would be difficult for observers to detect within large, unconfined zones: high frequency cetaceans and phocid pinnipeds. The topography of sites and facilities in Seward, Juneau, Sitka, and Petersburg are restricted such that noise would be confined to a small area or basin, and PSOs would be able to observe any marine mammals approaching the activity are and Level A shutdown zone with enough warning that work could be stopped before a take by Level A harassment would occur. The facilities at the remaining four sites (Kodiak, Ketchikan, Valdez, and Cordova) are less confined, and PSOs may be unable

to observe cryptic species at the calculated isopleths. Therefore, we conservatively propose small numbers of take by Level A harassment for high frequency cetaceans and phocid pinnipeds at these sites.

Table 13—Source of Data Used To Estimate Exposure for Each Species or Stock and Facility

Species/Stock	Kodiak	Sitka	Ketchikan	Seward	Valdez	Cordova	Juneau	Petersburg
Gray whale	N	Sit	Ke	*	*	*	*	*
Humpback whale	N	Sit	Ke	Sew	V	N	J	N
Fin whale	*	*	*	*	N	N	*	*
Minke whale	N	Sit	Ke	N	V	N	Ke	Ke
Killer whale	N	Sit	Ke	G	N	G	Ke	Ke
Pacific white-sided dolphin	N	Ke	Ke	G	G	G	Ke	Ke
Dall's porpoise	N	N	Ke	Sew	N	N	Ke	Ke
Harbor porpoise Southeast Alaska	*	Sit	Ke	*	*	*	Ke	Ke
Harbor porpoise Gulf of Alaska	N	*	*	N	N	N	*	*
California sea lion	*	Sit	*	*	*	*	N	*
Northern fur seal	N	N	*	G	N	N	*	*
Steller sea lion	Ko	Sit	Ke	Sew	V	N	N	Sit
Harbor seal Prince William Sound	*	*	*	V	V	V	*	*
Harbor seal Lynn Canal/Stephens Passage	*	*	*	*	*	*	J	*
Harbor seal Sitka/Chatham Straight	*	Sit	*	*	*	*	*	*
Harbor seal Clarence Strait	*	*	Ke	*	*	*	*	J
Harbor seal South Kodiak	N	*	*	*	*	*	*	*

Abbreviations for source data are: N—Navy density data, Ke—Ketchikan, Sit—Sitka, Sew—Seward, J—Juneau, V—Valdez, Ko—Kodiak, G—estimate rounded up to 1 group *—Not applicable (no take).

TABLE 14—LEVEL B HARASSMENT AREAS AT EACH FACILITY (km²) FOR EACH METHOD AND/OR PILE TYPE

Facility	Timber vibratory	Steel vibratory	Timber impact	Composite [1] impact	Steel impact	DTH
Kodiak	1.3	4.51	0.006	0	1.03	4.51
Sitka	0.87	5.67	0.007	0	0.56	
Ketchikan	1.45	7.29	0.004	0	1.06	10.1
Valdez	2.62	40.21	0.007	0	1.43	
Cordova		23.42			1.57	
Juneau	1.62	NA	0.003	0	NA	
Petersburg	1.63	2.89	0.006	0	1.33	
Seward		0.24			0.24	

[1] Composite Level B harassment zone (3 m) is completely encompassed by the 20 m shutdown zone proposed by Coast Guard.

The calculated Level B harassment takes using the above data for each year are in Table 15 and for each facility over the course of the proposed rule are in Table 16. See Tables 6–14 through 6–21 in the application and the supplemental memo (composite piles) for detailed calculations of estimated take for each pile type and activity at each facility. The calculated Level A harassment takes using the above data for each year are in Table 17 and for each facility over the course of the proposed rule are in Table 18.

Table 19 summarizes Level A and Level B harassment take proposed to be authorized for the project as well as the percentage of each stock expected to be taken in the year with the maximum annual takes over the course of the project.

TABLE 15—PROPOSED LEVEL B HARASSMENT TAKE IN EACH OF THE FIVE YEARS AND IN TOTAL FOR THE PROPOSED RULE

Stock	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Gray whale	8	8	8	8	8	40
Humpback whale *	160	174	164	160	160	818
Fin whale	13	23	13	13	13	75
Minke whale	5	6	5	5	5	25
Killer whale *	103	344	144	103	103	797
Pacific white-sided dolphin	215	297	337	215	215	1,379
Dall's porpoise	114	147	115	114	114	604
Harbor porpoise Southeast Alaska	72	72	72	72	72	360
Harbor porpoise Gulf of Alaska	47	115	48	47	47	304
California sea lion	10	10	10	10	10	50
Northern fur seal	9	23	131	9	9	181
Steller sea lion Eastern	425	425	425	425	425	2,125
Steller sea lion Western	24	34	32	24	24	138
Harbor seal Prince William Sound	148	442	344	148	148	1,230
Harbor seal Lynn Canal/Stephens Passage	860	860	860	860	860	4,300
Harbor seal Sitka/Chatham Straight	230	230	230	230	230	1,150
Harbor seal Clarence Strait	412	412	412	412	412	2,060
Harbor seal South Kodiak	17	17	17	17	17	85

* Stocks of killer whales and humpback whales cannot generally be identified in the field so total proposed take is listed at species level only.

Table 16—Proposed Level B Harassment Take for Each Facility

Species	Stock	Kodiak	Sitka	Ketchikan	Seward	Valdez	Cordova	Juneau	Petersburg
Gray whale	Eastern North Pacific	25	5	10	0	0	0	0	0
Humpback whale	Central North Pacific[b]	50	250	60	4	40	14	400	0
	Western North Pacific[c]		0[a]	0[a]				0[a]	0[a]
Fin whale	Northeast Pacific	35	0	0	0	30	10	0	0
Minke whale	Alaska	5	0	5	0	5	1	5	5
Killer whale	Alaska Resident[b]	5	400	40	20	241	40	10	41
	Gulf of Alaska, Aleutian Islands, Bearing Sea Transient[d]								
	Northern Resident[e]								
	West Coast Transient[f]								
	AT1 Transient[g]								
Pacific white-sided dolphin	North Pacific	300	145	285	122	0	182	285	60
Dall's porpoise	Alaska	15	20	200	1	95	33	200	40
Harbor porpoise	Southeast Alaska	0[a]	250	50	0[a]	0[a]	0[a]	50	10
	Gulf of Alaska	235	0[a]	0[a]	1	0	68	0[a]	0[a]
California sea lion	United States	0[a]	50	0	0[a]	0[a]	0[a]	0	0[a]
Northern fur seal	Eastern Pacific	0	0	0	122	40	14	5	0[a]
Steller sea lion	Eastern	0[a]	780	1,000	0[a]	0[a]	0[a]	25	320
	Western	35	20	0[a]	8	65	10	0[a]	0[a]

Harbor seal	Prince William Sound	0[a]	0[a]	0[a]	196	735	294	5	0[a]
	Lynn Canal/Stephens Passage	0[a]	0[a]	0[a]	0[a]	0[a]	0[a]	4,300	0[a]
	Sitka/Chatham Straight	0[a]	1,150	0[a]	0[a]	0[a]	0[a]	0[a]	0[a]
	Clarence Strait	0[a]	0[a]	1,200	0[a]	0[a]	0[a]	0[a]	860
	South Kodiak	85	0[a]	0[a]	0[a]	0[a]	0[a]	0[a]	0[a]

a. Stock does not occur in this region, therefore no takes would be authorized (Muto *et al.*, 2022)
b. Stock range overlaps with all 8 locations(Muto *et al.*, 2022)
c. Stock range overlaps with Kodiak, Seward, Valdez, and Cordova (Muto *et al.*, 2021)
d. Stock range overlaps with Kodiak, Sitka, Seward, Valdez, Cordova (Muto *et al.*, 2022)
e. Stock range overlaps with Sitka, Ketchikan, Juneau, and Petersburg (Muto *et al.*, 2022)
f. Stock range overlaps with Seward, Valdez, and Cordova (Muto et al., 2022)
g. No takes of the AT1 stock are expected or proposed for authorization.

TABLE 17—PROPOSED LEVEL A HARASSMENT TAKE IN EACH YEAR AND IN TOTAL FOR THE PROPOSED RULE

Stock	1	2	3	4	5	Total
Dall's porpoise Alaska	86	98	86	86	86	442
Harbor porpoise Southeast Alaska	20	20	20	20	20	100
Harbor porpoise Gulf of Alaska	55	85	55	55	55	305
Harbor seal South Kodiak	20	20	20	20	20	100
Harbor seal Clarence Strait	20	20	20	20	20	100

Table 18—Proposed Level A Harassment Take for Each Facility of the Proposed Rule

Stock	Kodiak	Ketchikan	Cordova	Valdez
Dall's porpoise Alaska	200	200	12	30
Harbor porpoise Southeast Alaska	NA	100	NA	NA
Harbor porpoise Gulf of Alaska	200	NA	30	75
Harbor seal South Kodiak	100	NA	NA	NA
Harbor seal Clarence Strait	NA	100	NA	NA

[Define "NA"].

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TABLE 19—PROPOSED LEVEL A AND LEVEL B HARASSMENT TAKE AND PERCENT OF STOCK FOR THE HIGHEST ANNUAL ESTIMATED TAKES OF THE PROJECT

Stock	Level A	Level B	Total	Percent of stock
Gray whale Eastern North Pacific	0	8	8	0.03
Humpback whale Central North Pacific Humpback whale Western North Pacific	0	174	174	[a] 1.7 [a] 0.3
Fin whale Northeast Pacific	0	23	23	N/A
Minke whale Alaska	0	6	6	N/A
Killer whale Alaska Resident	0	344	344	[a] 14.65
Killer whale Gulf of Alaska, Aleutian Islands, Bearing Sea Transient	....	....	....	[a] 13.95
Killer whale Northern Resident	....	....	....	[a] 3.23
Killer whale AT1 Transient [b]	....	....	....	[a b] 0
Killer whale West Coast Transient	....	....	....	[a] 3.23
Pacific white-sided dolphin North Pacific	0	397	397	1.48
Dall's porpoise Alaska	98	147	245	N/A
Harbor porpoise Southeast Alaska	20	72	92	8.70
Harbor porpoise Gulf of Alaska	85	115	245	0.64
California sea lion U.S	0	10	10	0.00
Northern fur seal Eastern Pacific	0	131	131	0.02
Steller sea lion Eastern	0	425	425	0.98
Steller sea lion Western	0	34	34	0.06
Harbor seal Prince William Sound	0	442	442	1.06
Harbor seal Lynn Canal/Stephens Passage	0	860	860	7.25
Harbor seal Sitka/Chatham Straight	0	230	230	1.94
Harbor seal Clarence Strait	20	412	432	1.74
Harbor seal South Kodiak	20	17	37	0.17

[a] Percent of stock impacted for humpback and killer whales was estimated assuming each stock is taken in proportion to its population size at any given facility site from the total take (*E.g.,* for killer whales at Kodiak, the Alaska Resident and Gulf of Alaska stocks are the only stocks present. Of these, the Alaska Resident stock represents approximately 80% of the available animals, and GOA represents approximately 20%, giving 4 total Alaska Resident killer whale takes over the 5 years, and 1 GOA killer whale take. This division was replicated for each site for all present stocks. Takes were then calculated for each site based on the proportional representation of available stocks. Total takes for each stock are shown as a percentage of the stock size.)

[b] AT1 Transient killer whales have the potential to be present in the Seward, Valdez, and Cordova, however we do not expect any of the seven individuals to approach the project sites, therefore no take is expected to occur for this stock and none is proposed for authorization.

Proposed Mitigation

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation strategies described below largely follow those required and successfully implemented under previous incidental take authorizations issued in association with similar construction activities. Measurements from similar pile driving events were coupled with practical spreading loss and other relevant information to estimate harassment zones (see Estimated Take); these zones were used to develop mitigation measures for DTH and pile driving activities at the eight facilities. Background discussion related to underwater sound concepts and terminology is provided in the section on *Description of Sound Sources,* earlier in this preamble.

The following mitigation measures are proposed:

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 20 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions. The Coast Guard has elected to establish a minimum shutdown zone size of 20 m, larger than NMFS' typical requirement of a minimum 10 m shutdown zone;
- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant Coast Guard staff prior to the start of all pile driving, cutting or power washing activity and when new personnel join the work, so that responsibilities, communication

procedures, monitoring protocols, and operational procedures are clearly understood;

• DTH and pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone;

• The Coast Guard will establish and implement a minimum shutdown zone of 20 m during all pile driving and removal activity, as well as the larger zones indicated in Table 20. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group. The Coast Guard has elected to establish a minimum shutdown zone size of 20 m, larger than NMFS' typical requirement of a minimum 10 m shutdown zone;

• Employ PSOs and establish monitoring locations as described in the application, any issued LOA and the Marine Mammal Monitoring Plan. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all DTH and pile driving at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

• The placement of the PSOs during all DTH and pile driving activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

• Monitoring must take place from 30 minutes prior to initiation of DTH and pile driving activity through 30 minutes post-completion of DTH and pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. DTH and pile driving may commence following 30 minutes of observation when the determination is made;

• If DTH or pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;

• The Coast Guard must use soft start techniques prior to beginning impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer;

• As described previously, the Coast Guard would adhere to in-water work windows designed for the protection of fishes and marine mammals under other permitting requirements;

• The Coast Guard has volunteered that in-water construction activities will occur only during civil daylight hours; and

• Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the largest applicable harassment zone.

TABLE 20—SHUTDOWN ZONES (m) FOR EACH PILE TYPE AND METHOD

Method and pile type	Low frequency cetacean	Mid frequency cetacean	High frequency cetacean	Phocid	Otariid
Timber Vibratory	20	20	20	20	20
24-inch Steel Pipe Vibratory	20	20	20	20	20
Timber Impact	20	20	30	20	20
Composite Impact	20	20	20	20	20
24-inch Steel Pipe Impact	220	20	260	120	20
24-inch Concrete Impact	30	20	40	20	20
24-inch DTH	440	20	520	240	20

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving, or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or

cumulative), other stressors, or cumulative impacts from multiple stressors.

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

- Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs must be approved by NMFS prior to beginning any activity subject to these regulations.
- PSOs must record all observations of marine mammals as described in any issued LOA and the NMFS-approved Marine Mammal Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;
- The Coast Guard must establish the following monitoring locations. For all pile driving activities, a minimum of one PSO must be assigned to the active pile driving location to monitor the shutdown zones and as much of the Level B harassment zones as possible. Proposed monitoring locations are shown in Figures 6–1 through 6–41 of the application and summarized in Table 21. The number of PSOs required at each facility is dependent upon the size of the Level B harassment area as well as the topography of the activity site and a PSO's ability to observe the estimated Level A harassment area for the particular activity.

TABLE 21—SUMMARY OF PROTECTED SPECIES OBSERVER (PSO) COVERAGE AT EACH FACILITY

Facility	Maximum number of PSOs
Kodiak	2
Sitka	5
Ketchikan	5
Valdez	3
Cordova	3
Juneau	3
Petersburg	3
Seward	2

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future LOAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact or cutting) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving, DTH).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: name of PSO who sighted the animal(s), and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); animal's closest point of approach and estimated time spent within the harassment zone; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species.
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the LOA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was likely caused by the specified activity, the Coast Guard must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA

and regulations. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

DTH and pile driving activities associated with the maintenance projects, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only for all species other than the harbor porpoise, harbor seal, and Dall's porpoise from underwater sounds generated from DTH and pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when DTH or pile driving is happening.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. For all species other than the harbor seal, harbor porpoise and Dall's porpoise, no Level A harassment is anticipated due to the confined nature of the facilities, ability to position PSOs at stations from which they can observe the entire shutdown zones, and the high visibility of the species expected to be present at each site. Additionally, much of the anticipated activity would involve vibratory driving or installation of small-diameter, non-steel piles, and include measures designed to minimize the possibility of injury. The potential for injury is small for mid- and low-frequency cetaceans and sea lions, and is expected to be essentially eliminated through implementation of the planned mitigation measures—soft start (for impact driving), and shutdown zones.

DTH and impact driving, as compared with vibratory driving, have source characteristics (short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. Environmental conditions in these waters are expected to generally be good, with calm sea states, and we expect conditions would allow a high marine mammal detection capability, enabling a high rate of success in implementation of shutdowns to avoid injury.

As described previously, there are multiple species that should be considered rare in the proposed project areas and for which we propose to authorize only nominal and precautionary take. Therefore, we do not expect meaningful impacts to these species (*i.e.,* gray whale, minke whale, transient and resident killer whales, and California sea lions) and preliminarily find that the total marine mammal take from each of the specified activities will have a negligible impact on these marine mammal species.

For remaining species, we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; U.S. Navy, 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Alaska, San Francisco Bay and in the Puget Sound region, which have taken place with no known long-term adverse consequences from behavioral harassment.

The U.S. Navy has conducted multi-year activities potentially affecting marine mammals, and typically involving greater levels of activity than is contemplated here in various locations such as San Diego Bay and Puget Sound. Reporting from these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations (Lerma, 2014; U.S. Navy, 2016a and b).

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving or DTH associated with some project components may produce sound at distances of many kilometers from the pile driving site, thus intruding on higher-quality habitat, the project sites themselves and the majority of sound fields produced by the specified activities are within industrialized areas. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B

harassment, we anticipate that harbor seals, harbor porpoises, and Dall's porpoises may sustain some limited Level A harassment in the form of auditory injury at four of the facilities, assuming they remain within a given distance of the pile driving activity for the full number of pile strikes or DTH strikes. Considering the short duration to impact drive or vibrate each pile and breaks between pile installations (to reset equipment and move pile into place), this means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area. Harbor seals and porpoises in these locations that do experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by DTH or pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start. Shutdown zones for the porpoises are only slightly smaller than the extent of the Level A harassment zones, further minimizing the chances for PTS or more severe effects.

In addition, although affected humpback whales and Steller sea lions may be from DPSs that are listed under the ESA, it is unlikely that minor noise effects in a small, localized area of sub-optimal habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized.
- Use of soft start (for impact driving) is expected to minimize Level A harassment.
- No important habitat areas have been identified within the project area.
- For all species, the project locations are a very small and generally peripheral part of their range.
- Authorized Level A harassment would be very small amounts and of low degree.
- Monitoring reports from similar work in many of the locations in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance of all species and stocks (take of individuals is less than 14 percent of the abundance of the affected stocks for the year of this rulemaking with the maximum amount of activity; see Table 19). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

For fin whale, minke whale, Dall's porpoise, and Southeast Alaska harbor porpoise, no valid abundance estimate for the entire stock is available. There is no stock-wide abundance estimate for Northeast Pacific fin whales. However, Muto *et al.* (2021) estimate the minimum stock size for the areas surveyed is 2,554. Therefore, the 23 maximum annual authorized takes of this stock represents small numbers of this stock. There is no stock-wide abundance estimate for the Alaska stock of minke whales. However, Muto *et al.* (2021) show over 2,000 animals for areas surveyed recently. Therefore, the six maximum annual authorized takes of this stock represents small numbers of this stock. The Alaska stock of Dall's porpoise has no official NMFS abundance estimate for this area, as the most recent estimate is greater than 8 years old. Nevertheless, the most recent estimate was 83,400 animals and it is unlikely this number has drastically declined. Therefore, the 245 maximum annual authorized takes of this stock represents small numbers of this stock. There is no stock-wide abundance estimate for the Southeast Alaska stock of harbor porpoises. However, Muto *et al.* (2021) estimate the minimum stock size for the areas surveyed is 1,057. Therefore, the 92 maximum annual authorized takes of this stock represents small numbers of this stock. Therefore, we preliminarily find that small numbers of marine mammals will be taken relative to the population size of all stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue regulations and LOAs, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine

mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As discussed above in the Effects of Specified Activities on Subsistence Uses of Marine Mammals section, subsistence harvest of harbor seals and other marine mammals is rare in the project areas and local subsistence users have not expressed concern about this project. All project activities will take place within industrialized areas where subsistence activities do not generally occur. The project also will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where these construction activities are not expected to take place. Some minor, short-term harassment of the harbor seals could occur, but any effects on subsistence harvest activities in the region will be minimal, and not have an adverse impact.

Based on the effects and location of the specified activity, and the mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from the Coast Guard's planned activities.

Adaptive Management

The regulations governing the take of marine mammals incidental to Coast Guard maintenance construction activities would contain an adaptive management component.

The reporting requirements associated with this proposed rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Coast Guard regarding practicability) on an annual basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of regulations and LOAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Western DPS Steller sea lions (*Eumetopias jubatus*) and Mexico DPS of humpback whales (*Megaptera novaeangliae*), which are listed under the ESA. NMFS' Office of Protected Resources has requested initiation of Section 7 consultation with the NMFS Alaska Regional Office for the issuance of these regulations and LOA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning the Coast Guard's request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This document and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Coast Guard is the sole entity that would be subject to the requirements in these proposed regulations, and the Coast Guard is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

This proposed rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act because the applicant is a federal agency.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 20, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart T, consisting of §§ 217.190 through 217.199, to read as follows:

Subpart T—Taking Marine Mammals Incidental to U.S. Coast Guard Alaska Facility Maintenance and Repair Activities

Sec.
217.190 Specified activity and specified geographical region.
217.191 Effective dates.
217.192 Permissible methods of taking.
217.193 Prohibitions.
217.194 Mitigation requirements.
217.195 Requirements for monitoring and reporting.
217.196 Letters of Authorization.
217.197 Renewals and modifications of Letters of Authorization.
217.198–217.199 [Reserved]

§ 217.190 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to incidental taking of marine mammals by the U.S. Coast Guard (Coast Guard) and those persons it authorizes or funds to conduct activities on its behalf in the areas outlined in paragraph (b) of this section and that occurs incidental to maintenance construction activities.

(b) The taking of marine mammals by the Coast Guard may be authorized in a Letter of Authorization (LOA) only if it occurs within Gulf of Alaska waters in

the vicinity of one of the following eight Coast Guard facilities: Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and Seward.

§ 217.191 Effective dates.

Regulations in this subpart are effective from [EFFECTIVE DATE OF A FINAL RULE], through [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF A FINAL RULE].

§ 217.192 Permissible methods of taking.

Under LOAs issued pursuant to § 216.106 of this chapter and § 217.196, the Holder of the LOA (hereinafter ''Coast Guard'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.190(b) by Level A or Level B harassment associated with maintenance construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

§ 217.193 Prohibitions.

Except for takings described in § 217.192 and authorized by a LOA issued under § 216.106 of this chapter and § 217.196, it shall be unlawful for any person to do any of the following in connection with the activities described in § 217.190 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.196;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as authorized;

(d) Take a marine mammal specified in such LOAs after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 217.194 Mitigation requirements.

When conducting the activities identified in § 217.190(a), the mitigation measures contained in this subpart and any LOA issued under § 216.106 of this chapter and § 217.196 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Coast Guard, supervisory construction personnel, lead protected species observers (PSOs), and any other relevant designees of the Coast Guard operating under the authority of this LOA at all times that activities subject to this LOA are being conducted.

(2) The Coast Guard shall conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant Coast Guard staff prior to the start of all down-the-hole (DTH), pile driving, cutting or power washing activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood.

(3) The Coast Guard shall avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 20 m of an activity regulated under this subpart, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions.

(b) *Shutdown zones.* (1) For all DTH, pile driving, cutting or power washing activity, the Coast Guard shall implement a minimum shutdown zone of a 20-m radius around the pile or DTH hole. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(2) For all DTH and pile driving activity, the Coast Guard shall implement shutdown zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.196. If a marine mammal comes within or approaches the 20-m shutdown zone, such operations shall cease.

(3) For all DTH and pile driving activity, the Coast Guard shall designate monitoring zones with radial distances as identified in any LOA issued under § 216.106 of this chapter and § 217.196. Anticipated observable zones within the designated monitoring zones shall be identified in the Marine Mammal Monitoring Plan, subject to approval by NMFS.

(c) *Shutdown protocols.* (1) The Coast Guard shall deploy Protected Species Observers (PSOs) as indicated in the Marine Mammal Monitoring Plan, which shall be subject to approval by NMFS, and as described in § 217.195.

(2) For all DTH and pile driving activities, a minimum of one PSO shall be stationed at the active pile driving rig or activity site or in reasonable proximity in order to monitor the entire shutdown zone.

(3) Monitoring must take place from 30 minutes prior to initiation of DTH and pile driving activity through 30 minutes post-completion of DTH and pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. DTH and pile driving activity may commence following 30 minutes of observation when the determination is made.

(4) If DTH and pile driving activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(5) Monitoring shall be conducted by trained PSOs, who shall have no other assigned tasks during monitoring periods. Trained PSOs shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Coast Guard shall adhere to the following additional PSO qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more PSOs are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) The Coast Guard shall submit PSO CVs for approval by NMFS.

(d) *Soft start protocols.* The Coast Guard must use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy three-strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

§ 217.195 Requirements for monitoring and reporting.

(a) *Marine mammal monitoring plan.* The Coast Guard must submit a Marine Mammal Monitoring Plan to NMFS for approval in advance of construction. Marine mammal monitoring must be conducted in accordance with the

conditions in this section and the Marine Mammal Monitoring Plan.

(b) *PSO requirements.* Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs must be approved by NMFS prior to beginning any activity subject to this subpart.

(c) *Marine mammal observation recording.* PSOs must record all observations of marine mammals as described in the Marine Mammal Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed.

(d) *PSO deployment.* The Coast Guard shall deploy additional PSOs to monitor harassment zones according to the minimum requirements defined in Marine Mammal Monitoring Plan, subject to approval by NMFS. These observers shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer(s) as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(e) *Reporting.* (1)(i) Coast Guard shall submit a draft monitoring report to NMFS within 90 work days of the completion of required monitoring for each portion of the project as well as a comprehensive summary report at the end of the project. Coast Guard shall provide a final report within 30 days following resolution of comments on the draft report. If no work requiring monitoring is conducted within a calendar year, Coast Guard shall provide a statement to that effect in lieu of a draft report.

(ii) These reports shall contain, at minimum, the following:

(A) Dates and times (begin and end) of all marine mammal monitoring;

(B) Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact or vibratory) and the total equipment duration for vibratory or DTH for each pile or total number of strikes for each pile (impact driving, DTH);

(C) PSO locations during marine mammal monitoring;

(D) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(E) Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; time of sighting; identification of the animal(s) (*e.g.,* genus and species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); estimated number of animals (min, max, and best estimate); estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); animal's closest point of approach and estimated time spent within the harassment zone; and description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(F) Number of marine mammals detected within the harassment zones, by species; and

(G) Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

(2) Coast Guard shall submit a comprehensive summary report to NMFS not later than 90 days following the conclusion of marine mammal monitoring efforts described in this subpart.

(3) All draft and final monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Hotchkin@noaa.gov.*

(f) *Reporting of injured or dead marine mammals.* (1) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the LOA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.Hotchkin@noaa.gov*), NMFS and to Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was likely caused by the specified activity, the Coast Guard must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the regulations under this subpart and LOAs. The LOA-holder must not resume their activities until notified by NMFS. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(2) [Reserved]

§ 217.196 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations under this subpart, the Coast Guard must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of the regulations under this subpart.

(c) If an LOA expires prior to the expiration date of the regulations under this subpart, the Coast Guard may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Coast Guard must apply for and obtain a modification of the LOA as described in § 217.197.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the regulations of this subpart.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.197 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.196 for the activity identified in § 217.190(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations under this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under the regulations of this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.196 for the activity identified in § 217.190(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Coast Guard regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Coast Guard's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations under this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.196, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.198–217.199 [Reserved]

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