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Presidential Documents

Title 3—

The President

Proclamation 10575 of May 9, 2023

Revoking the Air Travel COVID–19 Vaccination Requirement

By the President of the United States of America

A Proclamation

Today, we are in a different phase of the response to the coronavirus disease 2019 (COVID–19) pandemic than we were in October 2021, when I issued Proclamation 10294 of October 25, 2021 (Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic). At the time, new variants of SARS–CoV–2, the virus that causes COVID–19, had emerged globally and my Administration was responding to variants that were more transmissible or caused more severe disease than the original virus strain. Consistent with guidance from our public health experts, I determined that it was in the interests of the United States to adopt an international air travel policy that relied primarily on vaccination to limit the risk that the COVID–19 virus, including variants of that virus, would be introduced, transmitted, and spread into and throughout the United States.

Now, we have successfully marshaled a whole-of-government response to make historic investments in broadly accessible vaccines, tests, and therapeutics to help us combat COVID–19. Our public health experts have issued guidance that allows all travelers to understand mitigation measures to protect themselves and those around them. Our healthcare system and public health resources throughout the country are now better able to respond to any potential surge of COVID–19 cases without significantly affecting access to resources or care. Globally, COVID–19 cases and deaths are at their lowest levels since the start of the pandemic. As we continue to monitor the evolving state of COVID–19 and the emergence of virus variants, we have the tools to detect and respond to the potential emergence of a variant of high consequence. Considering the progress that we have made, and based on the latest guidance from our public health experts, I have determined that we no longer need the international air travel restrictions that I imposed in October 2021.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), hereby find that, except as provided in any other applicable proclamation, the unrestricted entry of persons described in section 2 of Proclamation 10294 is no longer detrimental to the interests of the United States. I therefore hereby proclaim the following:

Section 1. *Revocation.* Proclamation 10294, except sections 1, 6, 7, and 8 thereof, is revoked.

Sec. 2. *Review of Agency Actions.* The Secretary of State, the Secretary of Health and Human Services (including through the Director of the Centers for Disease Control and Prevention), the Secretary of Transportation, and the Secretary of Homeland Security shall review any regulations, orders, guidance documents, policies, and any other similar agency actions developed pursuant to Proclamation 10294 and, as appropriate, shall consider revising or revoking these agency actions consistent with the policy set forth in this proclamation.

Sec. 3. *Effective Date.* This proclamation is effective at 12:01 a.m. eastern daylight time on May 12, 2023.

Sec. 4. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

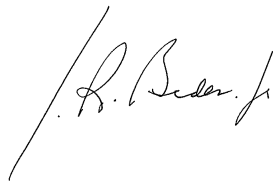
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand twenty-three, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2023–10406
Filed 5–12–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Executive Order 14099 of May 9, 2023

Moving Beyond COVID–19 Vaccination Requirements for Federal Workers

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

Section 1. *Policy.* In 2021, based on the best available data and guidance from our public health experts, I issued Executive Order 14043 of September 9, 2021 (Requiring Coronavirus Disease 2019 Vaccination for Federal Employees), to direct executive departments and agencies (agencies) to require coronavirus disease 2019 (COVID–19) vaccination for their employees, and Executive Order 14042 of September 9, 2021 (Ensuring Adequate COVID Safety Protocols for Federal Contractors), to ensure that Federal contractors and subcontractors have adequate COVID–19 safety protocols. I issued those orders at a time when the highly contagious B.1.617.2 (Delta) variant was the predominant variant of the virus in the United States and had led to a rapid rise in cases and hospitalizations. Those orders were necessary to protect the health and safety of critical workforces serving the American people and to advance the efficiency of Government services during the COVID–19 pandemic. Following issuance of those orders, my Administration successfully implemented a vaccination requirement for the Federal Government, the largest employer in the Nation, achieving a 98 percent compliance rate (reflecting employees who had received at least one dose of the COVID–19 vaccine or had a pending or approved exemption or extension request) by January 2022. More broadly, my Administration has effectively implemented the largest adult vaccination program in the history of the United States, with over 270 million Americans receiving at least one dose of the COVID–19 vaccine.

Following this important work, along with continued critical investments in tests and therapeutics that are protecting against hospitalization and death, we are no longer in the acute phase of the COVID–19 pandemic, and my Administration has begun the process of ending COVID–19 emergency declarations. Our public health experts have issued guidance that allows individuals to understand mitigation measures to protect themselves and those around them. Our healthcare system and public health resources throughout the country are now better able to respond to any potential surge of COVID–19 cases without significantly affecting access to resources or care. Since September 2021, COVID–19 deaths have declined by 93 percent, and new COVID–19 hospitalizations have declined by 86 percent. Considering this progress, and based on the latest guidance from our public health experts, we no longer need a Government-wide vaccination requirement for Federal employees or federally specified safety protocols for Federal contractors. Vaccination remains an important tool to protect individuals from serious illness, but we are now able to move beyond these Federal requirements.

Sec. 2. *Revocation of Vaccination Requirements.* Executive Order 14042 and Executive Order 14043 are revoked. Agency policies adopted to implement Executive Order 14042 or Executive Order 14043, to the extent such policies are premised on those orders, no longer may be enforced and shall be rescinded consistent with applicable law.

Sec. 3. *Effective Date.* This order is effective at 12:01 a.m. eastern daylight time on May 12, 2023.

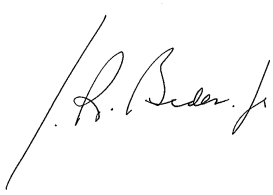
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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



THE WHITE HOUSE,
May 9, 2023.

[FR Doc. 2023–10407
Filed 5–12–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 93
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1027; Airspace Docket No. 21–AEA–33; Docket No. FAA–2022–0905; Airspace Docket No. 21–AEA–26]

RIN 2120–AA66

Amendment and Revocation of VOR Federal Airways; Eastern United States Amendment and Revocation of VOR Federal Airways; Northeast United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends four Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways (V–33, V–157, V–213, and V–433) in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notices of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published an NPRM for Docket No. FAA–2022–1027 in the **Federal Register** (87 FR 52710; August 29, 2022) proposing to remove VOR Federal airways V–46, V–91, V–270, V–273, and V–499; and to amend VOR Federal airways V–123, V–157, V–213, V–433, and V–483. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. The FAA received one comment but it was outside the scope of this rulemaking.

In a previous NPRM, Docket No. FAA–2022–0905 in the **Federal Register** (87 FR 43759; July 22, 2022), the FAA had proposed to amend VOR Federal airway V–10, and remove airways V–33, V–99, V–377, V–403, and V–405. No comments were received.

To streamline the publication of final rules in both dockets, the FAA decided to combine the amendments for airway V–33 with the amendments proposed for Docket No. FAA–2022–1027. This final rule does not address the removal and amendments to Federal airway V–10, V–99, V–377, V–403, and V–405 proposed in Docket No. FAA–2022–0905. Those proposed changes will be addressed in a separate final rule document.

Differences From the NPRMs

In Docket No. FAA–2022–1027, the FAA proposed to remove V–46, V–91, V–270, V–273, and V–499; and to amend V–123, V–157, V–213, V–433, and V–483. Due to staffing and training limitations, this final rule will not remove V–46, V–91, V–123, V–270, V–273, and V–483, or amend V–499 at this time.

The NPRM proposed to amend V–433 by removing the segments from Nottingham, MD to Bridgeport, CT in support of the planned decommissioning of the Nottingham, MD (OTT), VOR withTactical Air Navigational System (VORTAC), the Patuxent, MD (PXT), VORTAC and the Bridgeport, CT (BDR), VOR/Distance Measuring Equipment (DME). The Bridgeport VOR/DME decommissioning is not planned until a later fiscal year, therefore the FAA will retain the airway segments from Dupont, DE, to Bridgeport, CT, to provide continued availability of V–433 along those segments.

In Docket No. FAA–2022–0905, the FAA proposed to amend VOR Federal airway V–10, and remove airways V–33, V–99, V–377, V–403, and V–405. Subsequently, the FAA decided to remove only the route segments from Harcum, VA, to Nottingham, MD, and to retain the segments of V–33 that extend from Baltimore, MD, to Keating, PA.

Incorporation by Reference

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending VOR Federal airways V–33,

V–157, V–213, and V–433. The route changes are as follows:

V–33: V–33 consists of two parts: between Harcum, VA, and Nottingham, MD; and between Baltimore, MD, and Keating, PA. This action removes the segments between Harcum, VA, and Nottingham, MD. As amended, V–33 extends between Baltimore, MD, and Keating, PA. The words ''The airspace within R–4007 is excluded'' are removed from the route description because the amended route no longer passes near restricted area R–4007.

V–157: V–157 extends from Key West, FL, to Albany, NY. This action removes the segment from Richmond, VA, to Robbinsville, NJ. As a result, V–157 consists of two parts: from Key West, FL, to Richmond, VA; and from Robbinsville, NJ to Albany, NY. This change supports the decommissioning of the Patuxent, MD (PXT), VORTAC. With the removal of the above segment, the words ''The airspace within R–4005, R–4006, and R–4007A, and R–6602A is excluded'' are no longer required in the description. The exclusion of restricted area R–6602A is amended to read ''R–6602A, B, and C when active.''

V–213: V–213 extends from Grand Strand, SC, to Albany, NY. This action removes the segment that extends between Hopewell, VA, and Smyrna, DE. As a result, V–213 consists of two parts: from Grand Strand, SC to Hopewell, VA; and from Smyrna, DE to Albany, NY. The words ''The airspace within R–4005 and R–4006 is excluded'' are removed because the amended route no longer passes near the restricted areas.

V–433: V–433 extends from Nottingham, MD, to Syracuse, NY. This action removes the segments from Nottingham, MD, to Dupont, DE, in support of the planned decommissioning of the Nottingham, MD (OTT), VORTAC. As amended, V–433 extends from Dupont, DE, to Syracuse, NY.

The full descriptions of the above routes are listed in the amendments to part 71 set forth below.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending VOR Federal airways V–33, V–157, V–213, and V–433 in eastern United States qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–33 [Amended]

From Baltimore, MD; INT Baltimore 004° and Harrisburg, PA, 147° radials; Harrisburg; Philipsburg, PA; Keating, PA.

* * * * *

V–157 [Amended]

From Key West, FL; INT Key West 038° and Dolphin, FL, 244° radials; Dolphin; INT Dolphin 331° and La Belle, FL, 113° radials; La Belle; Lakeland, FL; Ocala, FL; INT Ocala 346° and Taylor, FL, 170° radials; Taylor; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; to Richmond, VA. From Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032°and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–6602A, B, and C is excluded when active.

* * * * *

V–213 [Amended]

From Grand Strand, SC, via Wilmington, NC; INT Wilmington 352° and Tar River, NC, 191° radials; Tar River; to Hopewell, VA. From Smyrna, DE; INT Smyrna 035° and Robbinsville, NJ, 228° radials; Robbinsville; INT Robbinsville 014° and Sparta, NJ, 174° radials; Sparta; to Albany, NY.

* * * * *

V–433 [Amended]

From Dupont, DE; Yardley, PA; INT Yardley 047° and Kennedy, NY, 253° radials; INT Kennedy 253° and LaGuardia, NY, 213° radials; LaGuardia; Bridgeport, CT; INT Bridgeport 324° and Pawling, NY, 160° radials; Pawling; INT Pawling 304° and Rockdale, NY, 116° radials; Rockdale; INT Rockdale 325° and Syracuse, NY, 100° radials; to Syracuse.

* * * * *

Issued in Washington, DC, on May 9, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–10283 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1769; Airspace Docket No. 22–AAL–8]

RIN 2120–AA66

Revocation of Colored Federal Airway Blue 38 (B–38) and Blue 40 (B–40); Haines, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Colored Federal airways Blue 38 (B–38) and Blue 40 (B–40) in the vicinity of Haines, AK due to the pending decommissioning of the Haines (HNS) Non-directional Beacon (NDB).

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a NPRM for Docket No. FAA–2022–1769 in the **Federal Register** (88 FR 5282; January 27, 2023), proposing to revoke Colored Federal airways B–38 and B–40 in the vicinity of Haines, AK due to the pending decommissioning of the Haines, AK, NDB. Interested parties were invited to participate in this rulemaking effort by submitting comments to the proposal. No comments were received.

Incorporation by Reference

Colored Federal airways are published in paragraph 6009 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Colored Federal airways B–38 and B–40. The FAA is taking this action due to the pending decommissioning of the Haines, AK, NDB.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of revoking Colored Federal airways B–38 and B–40 in the vicinity of Haines, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6009(d) Colored Federal Airways.

* * * * *

B–38 [Remove]

B–40 [Remove]

* * * * *

Issued in Washington, DC, on May 10, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–10311 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0501; Airspace Docket No. 23–AWP–3]

RIN 2120–AA66

Amendment of Very High Frequency (VHF) Omnidirectional Range (VOR) Federal Airways V–6, V–338, V–494, and United States Area Navigation (RNAV) Route T–331

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airways V–6, V–338, V–494, and United States Area Navigation (RNAV) route T–331 descriptions to reflect the Squaw Valley, CA, VOR/Distance Measuring Equipment (DME) navigational aid (NAVAID) name changing to the Palisades, CA, VOR/DME. This action only makes editorial amendments to the affected Air Traffic Service (ATS) routes listed above, it does not change the NAVAID identifier (SWR), the ATS route structures, or the Fixes and waypoints on the routes.

DATES: Effective date 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of this final rule and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the VOR Federal airway V–6, V–338, and V–494, and RNAV route T–331 descriptions.

Incorporation by Reference

Domestic VOR Federal airways and United States Area Navigation Routes are published in paragraphs 6010 and 6011, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by updating references to the Squaw Valley, CA, VOR/DME in VOR Federal airways V–6, V–338, V–494, and RNAV route T–331 descriptions with its new name, the Palisades, CA, VOR/DME. This action is necessary in order to reflect the NAVAID name change of the Squaw Valley VOR/DME to the Palisades VOR/DME being made in the National Airspace System Resource database concurrent with the effective date of this rule. This is an editorial change only and does not change the affected ATS route structures or the location of any Fixes or waypoints on the routes. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that the editorial amendments to the descriptions of VOR Federal airways V–6, V–338, V–494, and RNAV route T–331 are due to the Squaw Valley, CA, VOR/DME navigational aid (NAVAID) name changing to the Palisades, CA, VOR/DME. qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas,

airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–6 [Amended]

From Oakland, CA; INT Oakland 039° and Sacramento, CA, 212° radials; Sacramento; Palisades, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; INT Battle Mountain 062° and Wells, NV, 256° radials; Wells; 5 miles, 40 miles, 98 MSL, 85 MSL, Lucin, UT; 43 miles, 85 MSL, Ogden, UT; 11 miles, 50 miles, 105 MSL, Fort Bridger, WY; Rock Springs, WY; 20 miles, 39 miles, 95 MSL, Cherokee, WY; 39 miles, 27 miles, 95 MSL, Medicine Bow, WY; INT Medicine Bow 106° and Sidney, NE, 291° radials; Sidney; North Platte, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Davenport, IA; INT Davenport 087° and DuPage, IL, 255° radials; to DuPage. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; to Gipper. From Philipsburg, PA; Selinsgrove, PA; Allentown, PA; Solberg, NJ; INT Solberg 107° and Yardley, PA, 068° radials; INT Yardley 068° and La Guardia, NY, 213° radials; to La Guardia.

* * * * *

V–338 [Amended]

From Linden, CA; Hangtown, CA; to Palisades, CA.

* * * * *

V–494 [Amended]

From Crescent City, CA; INT Crescent City 195° and Fortuna, CA, 345° radials; Fortuna; INT Fortuna 170° and Mendocino, CA, 321° radials; Mendocino; INT Point Reyes, CA, 006° and Scaggs Island, CA, 314° radials; Sacramento, CA; INT Sacramento 038° and Palisades, CA, 249° radials; Palisades; INT Palisades 078° and Hazen, NV, 244° radials; to Hazen.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–331 FRAME, CA to FONIA, ND [Amended]

FRAME, CA	FIX	(Lat. 36°36′46.74″ N, long. 119°40′25.53″ W)
NTELL, CA	WP	(Lat. 36°53′58.99″ N, long. 119°53′22.21″ W)
KARNN, CA	FIX	(Lat. 37°09′03.79″ N, long. 121°16′45.22″ W)
VINCO, CA	FIX	(Lat. 37°22′35.11″ N, long. 121°42′59.52″ W)
NORCL, CA	WP	(Lat. 37°31′02.66″ N, long. 121°43′10.60″ W)
MOVDD, CA	WP	(Lat. 37°39′40.88″ N, long. 121°26′53.53″ W)
EVETT, CA	WP	(Lat. 38°00′36.11″ N, long. 121°07′48.14″ W)
TIPRE, CA	WP	(Lat. 38°12′21.00″ N, long. 121°02′09.00″ W)
Palisades, CA (SWR)	VOR/DME	(Lat. 39°10′49.16″ N, long. 120°16′10.60″ W)
TRUCK, CA	FIX	(Lat. 39°26′15.67″ N, long. 120°09′42.48″ W)
Mustang, NV (FMG)	VORTAC	(Lat. 39°31′52.60″ N, long. 119°39′21.87″ W)
Lovelock, NV (LLC)	VORTAC	(Lat. 40°07′30.95″ N, long. 118°34′39.34″ W)
Battle Mountain, NV (BAM)	VORTAC	(Lat. 40°34′08.69″ N, long. 116°55′20.12″ W)
TULIE, ID	WP	(Lat. 42°37′58.49″ N, long. 113°06′44.54″ W)
AMFAL, ID	WP	(Lat. 42°45′56.67″ N, long. 112°50′04.64″ W)
Pocatello, ID (PIH)	VOR/DME	(Lat. 42°52′13.38″ N, long. 112°39′08.05″ W)
VIPUC, ID	FIX	(Lat. 43°21′09.64″ N, long. 112°14′44.08″ W)
Idaho Falls, ID (IDA)	VOR/DME	(Lat. 43°31′08.42″ N, long. 112°03′50.10″ W)
SABAT, ID	FIX	(Lat. 44°00′59.71″ N, long. 111°39′55.04″ W)
Billings, MT (BIL)	VORTAC	(Lat. 45°48′30.81″ N, long. 108°37′28.73″ W)
EXADE, MT	FIX	(Lat. 47°35′56.78″ N, long. 104°32′40.61″ W)
JEKOK, ND	WP	(Lat. 47°59′31.05″ N, long. 103°27′17.51″ W)
FONIA, ND	FIX	(Lat. 48°15′35.07″ N, long. 103°10′37.54″ W)

Issued in Washington, DC, on May 9, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–10280 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 3

[Docket Number USCG–2023–0223]

Technical, Organizational, and Conforming Amendments; Sector Columbia River, WA and Sector North Bend, OR

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes to Coast Guard regulations in association with a change in the Coast Guard's internal organization. The purpose of this rule is to reflect the disestablishment of Sector North Bend and reorganization of Sector Columbia River. These changes will have no substantive effect on the regulated public.

DATES: This rule is effective May 15, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0223 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 Lieutenant Katie Graichen, District 13 Legal Office, U.S. Coast Guard; telephone 206–220–7110, email *katherine.e.graichen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AOR Area of responsibility
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OCMI Officer in Charge of Marine Inspections
OFCO Operating Facility Change Order
SAR Search and rescue
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard implemented the sector construct to consolidate earlier organizational structures. Within the Thirteenth Coast Guard District, Sector Columbia River and Sector North Bend have not fully conformed to the standard sector construct. In 2013, the Coast Guard amended 33 CFR part 3 to reflect changes in agency organization by creating and defining Coast Guard sectors that would ''exercise specific Search and Rescue Mission Coordinator authority over a designated portion of an encompassing sector's area of responsibility.'' See 78 FR 39163 (2013). Sector North Bend was one such sector, receiving Search and Rescue (SAR) Mission Coordinator authority over a designated portion of Sector Columbia River's encompassing area of responsibility. See 33 CFR 3.65–20.

To better align with the standard sector structure and to improve internal efficiencies, the Coast Guard is reorganizing Sector Columbia River and Sector North Bend. Specifically, Sector North Bend is being disestablished, so the regulation granting it special SAR Mission Coordinator authority is no longer applicable. The geographic boundaries of Sector Columbia River are not changing, but its office is moving from Astoria, OR, to Portland, OR.

We did not publish a notice of proposed rulemaking (NPRM) before this final rule. The Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553(b)(A) because the changes it makes are conforming amendments involving agency organization. The Coast Guard also finds good cause exists under 5 U.S.C. 553(b)(B) for not publishing an NPRM because the changes will have no substantive effect on the public, and notice and comment are therefore unnecessary. For the same reasons, the Coast Guard finds good cause under 5 U.S.C. 553(d)(3) to make the rule effective fewer than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 504(a)(2), as delegated at 33 CFR 1.05–1(h), to issue regulations necessary to implement technical, organizational, and conforming amendments and corrections to rules, regulations, and notices.

Operating Facility Change Order (OFCO) No. 034–22 announced the reorganization of Sector Columbia River and disestablishment of Sector North Bend. These conforming amendments update the regulation that describes Sector Columbia River so that it contains current information and removes the regulation that describes Sector North Bend.

Under 14 U.S.C. 504(a)(2), the Commandant of the Coast Guard has the authority to establish and prescribe the purpose of Coast Guard Shore establishments. And under 33 CFR 1.05–1(h), the Chief of the Coast Guard's Office of Regulations and Administrative Law has been delegated authority to issue technical, organizational, and conforming amendments and corrections to regulations to reflect changes introduced by OFCO No. 034–22.

IV. Discussion of the Rule

OFCO No. 034–22 announced the reorganization of Sector Columbia River and disestablishment of Sector North Bend and this rule reflects that organizational change in part 3 of Title 33 of the Code of Federal Regulations. OFCO No. 034–22 did not change Sector Columbia River's Area of Responsibility (AOR) but it relocated its office location. Part 3 of 33 CFR describes the location of U.S. Coast Guard districts, sectors, and Captain of the Port (COTP) and Officer in Charge of Marine Inspections (OCMI) zones. This rule amends § 3.65–15 to update the location of Sector Columbia River's office to Portland, OR.

This rule also removes § 3.65–20 because it is no longer necessary after the disestablishment of Sector North Bend. Sector North Bend's SAR Mission Coordinator authority specified in § 3.65–20 need not be addressed in § 3.65–15. Sector Columbia River encompasses the AOR of Sector North Bend and, in conformity with other sector regulations in 33 CFR part 3, SAR Mission Coordinator authority need not be specified in § 3.65–15.

Accordingly, this rule does not change Sector Columbia River's sector, OCMI, or COTP zone boundary lines, nor does it substantively impact existing regulated navigation area, safety zone, or security zone regulation, or any naval vessel protection zones. This rule does, however, revise § 3.01–1 to reflect that after the disestablishment of Sector North Bend, only one sector remains with specified SAR Mission Coordinator authority.

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.

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 finding that the disestablishment of Sector North Bend and reorganization will have no substantive effect on the public.

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.

For the reasons stated in section V.A above, this rule will not have a significant economic impact on any member of the public, including ''small entities.''

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 consists only of an organizational amendment. It is categorically excluded from further review under paragraph L3 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, Implementation of the National Environmental Policy Act.

List of Subjects in 33 CFR Part 3

Organizations and functions (Government agencies).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 501, 504; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

§ 3.01–1 [Amended]

■ 2. In § 3.01–1(d)(3) remove the words ''Some specified sectors exercise'' and add, in their place, the words ''A specified sector exercises''.

■ 3. Revise § 3.65–15 to read as follows:

§ 3.65–15 Sector Columbia River Marine Inspection Zone and Captain of the Port Zone.

Sector Columbia River's office is located in Portland, OR. The boundaries of Sector Columbia River's Marine Inspection and Captain of the Port Zones start at the Washington coast at latitude 47°32′00″ N, longitude 124°21′15″ W, proceeding along this latitude east to latitude 47°32′00″ N, longitude 123°18′00″ W; thence south to latitude 46°55′00″ N, longitude 123°18′00″ W; thence east along this latitude to the eastern Idaho state line; thence southeast along the Idaho state line to the intersection of the Idaho-Wyoming boundary; thence south along the Idaho-Wyoming boundary to the intersection of the Idaho-Utah-Wyoming boundaries; thence west along the southern border of Idaho to Oregon and then west along the southern border of Oregon to the coast at latitude 41°59′54″ N, longitude 124°12′42″ W; thence west along the southern boundary of the Thirteenth Coast Guard District, which is described in § 3.65–10, to the outermost extent of the EEZ at latitude 41°38′35″ N, 128°51′26″ W; thence north along the outermost extent of the EEZ to latitude 47°32′00″ N; thence east to the point of origin.

§ 3.65–20 [Removed]

■ 4. Remove § 3.65–20.

Dated: May 9, 2023.

Michael T. Cunningham,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2023–10195 Filed 5–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0197]

RIN 1625–AA00

Safety Zone; Ohio River, Racine, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on a 24-mile stretch of the Ohio River for paddle craft during the 1st Annual Race on the OYO. The safety zone will extend 100 yards from any participating vessel, as they transit from Racine, Ohio to Point Pleasant, West Virginia. This action is necessary to provide for the safety of life on these navigable waters during a paddle fest on June 17, 2023. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 6:00 a.m. through 4:00 p.m. on June 17, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0197 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 about this proposed rulemaking, call or email MST1 Chelsea Zimmerman, Marine Safety Unit Huntington, U.S. Coast Guard; (304) 733–0198, *Chelsea.M.Zimmerman@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 we must establish the safety zone by June 17, 2023, and lack sufficient time to request public comments and respond to these comments before the safety zone must be established.

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 Ohio Valley (COTP) has determined that potential hazards associated with the 1st Annual Race on the OYO starting June 17, 2023, will be a safety concern for anyone on the Ohio River between Racine, Ohio, and Point Pleasant, WV. This rule is needed to protect participants, vessels, and the marine environment in the navigable waters within the moving safety zone for the duration of the event.

IV. Discussion of the Rule

This rule establishes a safety zone from 6:00 a.m. through 4:00 p.m. on June 17, 2023. The safety zone will cover all navigable waters within a 100-yard radius of participant vessels between Racine, Ohio, and Point Pleasant, WV on the Ohio River. The duration of the safety zone is intended to protect participants, vessels, and the marine environment from potential hazards associated with river congestion.

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 size, location, duration, and time-of-day of the safety zone. Vessel traffic will be authorized to transit around the safety zone, once authorized by the Captain of the Port Ohio Valley or their designated representative. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone, and safely pass participating vessels.

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 safety zone lasting only 10 hours that will prohibit vessels from being within 100 yards of any participating paddle craft. 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, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0197 to read as follows:

§ 165.T08–0197 Safety Zone; Ohio River, Racine, OH.

(a) *Regulated area.* The Coast Guard is establishing a temporary moving safety zone on the Ohio River from Racine, OH to Point Pleasant, WV, around participating vessels in the 1st Annual Race on the OYO. The safety zone will extend 100-yards from any participant as they transit from the launch point in Racine, OH, until their finish location in Point Pleasant, WV.

(b) *Definitions. Designated representative* means a Coast Guard Patrol Commander (PATCOM), including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Ohio Valley (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(1) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(2) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(3) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(4) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both

(5) Any spectator vessel may anchor outside the regulated area specified above, but may not anchor in, block, or loiter in a navigable channel.

(6) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(7) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM marine radio channel 16 or phone at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(8) The COTP will provide notice of the regulated area through advanced notice via local notice to mariners and broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This safety zone will be subject to enforcement from 6:00 a.m. to 4:00 p.m. on June 17, 2023.

Dated: May 4, 2023.

H.R. Mattern,

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

[FR Doc. 2023–10277 Filed 5–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0344]

RIN 1625–AA00

Safety Zone; SFSU Graduation 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, outside McCovey Cove, in San Francisco, CA in support of a fireworks display on May 26, 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, 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 10 a.m. until 10:10 p.m. on May 26, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0344 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 13, 2023. It is impracticable to go through the full notice and comment rulemaking process because the Coast Guard must establish this safety zone by May 26, 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 outside McCovey Cove in San Francisco, CA on May 26, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the scheduled San Francisco State University (SFSU) Graduation Fireworks display on May 26, 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 600-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 in 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 10 a.m. until 10:10 p.m. on May 26, 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 10 a.m. and 8 p.m. on May 26, 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 9:30 p.m. and end approximately 9:40 p.m. on May 26, 2023, outside of McCovey Cove within the San Francisco Bay in San Francisco, CA.

At 9 p.m., which is 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 600 feet from the circle center at approximate position 37°46′36″ N, 122°22′56″ W (NAD 83). The safety zone will terminate at 10:10 p.m. on May 26, 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. This 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 minimum 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 outside McCovey Cove 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.T11–124 to read as follows:

§ 165.T11–124 Safety Zone; SFSU Graduation 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 outside McCovey Cove, San Francisco Bay in San Francisco, CA. Between 9 p.m. and 10:10 p.m. on May 26, 2023, the safety zone will expand to all navigable waters, from surface to bottom, within a circle formed by connecting all points 600 feet out from the fireworks vessel in approximate position 37°46′36″ N, 122°22′56″ 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 10 a.m. until 10:10 p.m. on May 26, 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: May 7, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–10227 Filed 5–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0349]

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 May 20, 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 May 20, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0349 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 May 20, 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 May 20, 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 May 20, 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 May 20, 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 May 20, 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 May 20, 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 May 20, 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. This 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 rue 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 minimum impact. The vessels desiring to transit through or around the temporary safety zine 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.T11–125 to read as follows:

§ 165.T11–125 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 May 20, 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 Broadcast.

(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 May 20, 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: May 7, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–10228 Filed 5–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0370]

Safety Zone; San Francisco Giants Fireworks, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM), any Official Patrol defined as other Federal, State, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 165.1191 will be enforced for the location identified in Table 1 to § 165.1191, Item number 1, from 10 a.m. until 10:40 p.m. on May 19, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LT William Harris, Waterways Management Division, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone in 33 CFR 165.1191 Table 1, Item number 1 for the San Francisco Giants Fireworks from 10 a.m. until 10:40 p.m. on May 19, 2023. The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet outwards of the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 10 a.m. until 9 p.m. on May 19, 2023, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks barge will remain at the loading location until its transit to the display location. From 9 p.m. to 9:15 p.m. on May 19, 2023, the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 10-minute fireworks display, scheduled to begin at the conclusion of the baseball game, between 9:30 p.m. and 10 p.m. on May 19, 2023, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37°46′36″ N, 122°22′56″ W (NAD 83). This safety zone will be enforced from 10 a.m. until 10:40 p.m. on May 19, 2023, or as announced via Marine Information Broadcast.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply with the directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in

this notice, a Marine Information Bulletin may be used to grant general permission to enter the regulated area.

Dated: May 7, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–10229 Filed 5–12–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No: 230509–0127]

RIN 0648–BL92

Pacific Halibut Fisheries of the West Coast; 2023 Catch Sharing Plan and Recreational Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action makes two corrections to the final rule that approved the 2023 Area 2A Pacific halibut catch sharing plan and implemented recreational management measures, which published on April 11, 2023. Specifically, NMFS is correcting the open fishing dates listed for the Washington South Coast subarea fishery and a reference to the subarea allocation amount for the Washington South Coast fishery.

DATES: Effective May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Katie Davis, West Coast Region, NMFS, (323) 372–2126, *Katie.Davis@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific halibut fishery in International Pacific Halibut Commission Regulatory Area 2A (waters off Washington, Oregon, and California) in accordance with the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k. As provided in the Halibut Act, the Regional Fishery Management Council having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in U.S. waters that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)). Since 1988, the Pacific Fishery Management Council (Council) has developed a Catch Sharing Plan, through the Council's public process, that allocates the Area 2A Pacific halibut catch limit between treaty tribal and non-tribal harvesters, and among non-tribal commercial and recreational (sport) fisheries and adopts management measures for the fishery. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the Catch Sharing Plan and implemented in annual rules annual management measures consistent with the Catch Sharing Plan. A final rule (88 FR 21503, April 11, 2023) implemented management measures consistent with the recommendations made by the Council in its 2023 Catch Sharing Plan, including days the fishery is open and subarea allocations in Area 2A. The season dates and bag limits in the final rule were effective on April 6, 2023 and the remainder of the rule is effective on May 11, 2023. The final rule contained two transcription errors for the Washington South Coast subarea.

Season Dates

On page 21504 of the final rule, NMFS inadvertently excluded three days the Council intended the fishery to be open in the Washington South Coast subarea: May 16, 20, and 30. At its November meeting, the Council recommended NMFS implement specific season dates for fishing in the Washington South Coast subarea. These dates were developed at the Council's September and November meetings with opportunity for public input. Specifically, the Council recommended that the Washington South Coast subarea be open for fishing on ''May 4 through May 23, three days per week, Tuesday, Thursday, and Sunday; Memorial Day weekend, open Thursday, May 25, and Tuesday, May 30''; however, the final rule inadvertently excluded Tuesdays in May.

As such, consistent with the intent of the Council, the corrected season dates for the Washington South Coast subarea in May are:

1. May 4, 7, 9, 11, 14, 16, 18, 21, 23, 25, and 30.

There are no other corrections to the season dates published in the final rule.

Subarea Allocation

Under the allocation framework the Council adopted in the Catch Sharing Plan, the Washington South Coast subarea is allocated 12.3 percent of the first 130,845 lb allocated to the Washington recreational fishery, and 32 percent of the Washington recreational allocation between 130,845 lb and 224,110 lb. Consistent with this framework and the allocation the IPHC set for Area 2A in 2023 (88 FR 14066, March 7, 2023), the Washington South Coast subarea is allocated 64,376 lb in 2023. Page 21504 of the final rule, consistent with the allocation framework in the Catch Sharing Plan, states that the Washington South Coast subarea allocation is 64,376 lb. However, the following paragraph on page 21504 incorrectly states that the subarea fishery would remain open ''until 68,555 lb (31.10 mt) is projected to be taken,'' which is inconsistent with the subarea allocation for 2023.

As such, consistent with the intent of the Council, the corrected statement regarding the time at which the Washington South Coast subarea will close is as follows:

1. The fishing season in the Washington South Coast northern nearshore area commences the Saturday subsequent to the closure of the primary fishery in May or June if allocation remains in the Washington South Coast subarea allocation, and continues 7 days per week until 64,376 lb (29.20 mt) is projected to be taken by the two fisheries combined and the fishery is therefore closed or on September 30, whichever is earlier.

There are no other corrections to the final rule published April 11, 2023.

Classifications

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Assistant Administrator for Fisheries determined 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 public interest because this action is necessary to correct an inadvertent error in the April 11, 2023, final rule (88 FR 21503). Immediate correction of the error is necessary to prevent confusion among participants in the fishery and to ensure management of the fishery is consistent with both the Council's intent for regulations developed over two public meetings and the public's expectations based on recommendations made in the Council's Catch Sharing Plan, as well as outreach materials distributed by the State of Washington. The corrected dates are also consistent with dates the fishery was open in 2022. Thus, delaying this correction to engage in notice-and-comment rulemaking would be contrary to the public interest.

Under section 553(d) of the APA, an agency must delay the effective date of

regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. For the same reasons stated above, the Assistant Administrator for Fisheries has determined good cause exists to waive the 30-day delay in effectiveness. This rule makes only two minor corrections to the final rule, which was effective April 6 (season dates and bag limits) and May 11 (remaining provisions), 2023. Delaying effectiveness of these corrections would result in conflicts in the regulations and confusion among fishery participants and would therefore be contrary to the public interest. Without waiving the 30-day delay in effectiveness, this correction to the season dates would not be effective prior to May 16, the first date that the final rule inadvertently omitted but was intended to be included.

The Regulatory Flexibility Act, 5 U.S.C. 603 and 604, requires an agency to prepare an initial and a final regulatory flexibility analysis whenever an agency is required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Because NMFS found good cause under section 553(b)(3)(B) of the APA to forgo publication of a notice of proposed rulemaking, the regulatory flexibility analyses described in 5 U.S.C. 603 and 604 are not required for this rulemaking.

This final rule is not significant under Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: May 9, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–10288 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 93
Monday, May 15, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1042; Project Identifier MCAI–2023–00274–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Model PC–24 airplanes. This proposed AD was prompted by reports of an electrical burning smell in the cabin without the presence of smoke. This proposed AD would require revising the Limitations Section of the existing airplane flight manual (AFM) for your airplane, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by June 29, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1042; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA service information that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA service information is also available at *regulations.gov* under Docket No. FAA–2023–1042.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1042; Project Identifier MCAI–2023–00274–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Doug Rudolph, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0038, dated February 14, 2023 (EASA AD 2023–0038) (referred to after this as the MCAI), to correct an unsafe condition for all Pilatus Model PC–24 airplanes.

The MCAI states that there have been reports of an electrical burning smell in the cabin without the presence of smoke and there is currently no AFM procedure for addressing this condition. The current AFM procedure for smoke/fume in the cockpit and/or cabin requires the immediate use of supplemental oxygen and smoke goggles for the flight crew, which leads to increased flight crew workload. Failure to revise the AFM to include a new task addressing an electrical burning smell in the cabin without the presence of smoke could result in an unsafe condition.

The FAA is proposing this AD to provide the flight crew with a new procedure in the existing AFM for your airplane to address the presence of an electrical burning smell in the cabin

without the presence of smoke. This condition, if not addressed, could lead to increased pilot workload, possibly resulting in a reduction of safety margins and an emergency landing. See EASA AD 2023–0038 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0038 requires revising the AFM by inserting a copy of Pilatus PC–24 AFM Temporary Revision 02371–055 (AFM TR 02371–055) into the Abnormal Procedures Section, informing all flight crews, and operating the airplane accordingly. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA, has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0038, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.''

The owner/operator (pilot) holding at least a private pilot certificate may revise the existing AFM for your airplane and must enter compliance with the applicable paragraph of this proposed AD into the aircraft records in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The pilot may perform this action because it only involves revising the AFM. This action could be performed equally well by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0038 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0038 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information referenced in EASA AD 2023–0038 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1042 after the FAA final rule is published.

Differences Between This Proposed AD and the EASA AD

EASA AD 2023–0038 requires inserting AFM TR 02371–055 into the Abnormal Procedures Section of the AFM but this proposed AD would require inserting AFM TR 02371–055 into the Limitations Section of the existing AFM because FAA regulations mandate compliance with only the operating limitations section of the flight manual.

EASA AD 2023–0038 specifies to ''inform all flight crews and, thereafter, operating the airplane accordingly'' and this proposed AD would not specifically require those actions.

14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

Interim Action

The FAA considers that this proposed AD would be an interim action. If final action is later identified, the FAA may consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 97 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise AFM	0.50 work-hour × $85 per hour = $42.50	$0	$42.50	$4,122.50

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

(3) Would not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pilatus Aircraft Ltd: Docket No. FAA–2023–1042; Project Identifier MCAI–2023–00274–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 29, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–24 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2100, Heating System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI states that there have been reports of an electrical burning smell in the cabin without the presence of smoke and there is currently no airplane flight manual (AFM) procedure for addressing this condition. The FAA is issuing this AD to provide the flight crew with a new procedure in the existing AFM for your airplane to address the presence of an electrical burning smell in the cabin without the presence of smoke. This condition, if not addressed, could lead to increased pilot workload, possibly resulting in a reduction of safety margins and an emergency landing.

(f) Compliance

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

(g) Required Action

(1) Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0038, dated February 14, 2023 (EASA AD 2023–0038).

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Exceptions to EASA AD 2023–0038

(1) Where EASA AD 2023–0038 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0038 specifies to ''amend the AFM by inserting a copy of the AFM TR,'' this AD requires revising the Limitations Section of the existing AFM for your airplane by inserting a copy of the AFM TR as defined in EASA AD 2023–0038.

(3) Where paragraph (1) of EASA AD 2023–0038 specifies to ''inform all flight crews and, thereafter, operate the [airplane] accordingly,'' this AD does not require those actions.

(4) This AD does not adopt the Remarks paragraph of EASA AD 2023–0038.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Additional Information

For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4059; email: *doug.rudolph@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2023–0038, dated February 14, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0038, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on May 9, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–10282 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1043; Project Identifier MCAI–2022–01295–E]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) Model Arrius 2B2 engines. This proposed AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM), introducing new and more restrictive tasks and limitations for certain life-limited parts. This proposed AD would require revising the ALS of the existing EMM or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable, by incorporating the actions and associated thresholds and intervals, including life limits, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by June 29, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1043; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1043.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1043; Project Identifier MCAI–2022–01295–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kevin Clark, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0203, dated September 30, 2022 (EASA AD 2022–0203) (referred to after this as the MCAI), to address an unsafe condition for all Safran Model Arrius 2B2 engines. The MCAI states that the manufacturer published a revised ALS introducing new and more restrictive tasks and limitations for certain life-limited parts. The more restrictive tasks and limitations include replacing life-limited parts before exceeding the applicable life limit, performing applicable maintenance tasks, and revising the approved aircraft maintenance program.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1043.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0203, which specifies instructions for accomplishing the actions specified in the applicable ALS, including replacing life-limited parts, performing maintenance tasks, and revising the existing approved aircraft maintenance program by incorporating the limitations, tasks, and associated thresholds and intervals described in the ALS.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences as discussed under ''Differences Between this Proposed AD and the MCAI.'' The owner/operator (pilot) holding at least a private pilot certificate may revise the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable for the engine, and must enter compliance with the applicable paragraphs of the AD into the engine maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. This action could be performed equally well by a pilot or a mechanic. This is an exception to the FAA's standard maintenance regulations.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to

use this process. As a result, the FAA proposes to incorporate by reference EASA AD 2022–0203 in the FAA final rule. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–1043 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Paragraph (1) of EASA AD 2022–0203 requires replacing each component before exceeding the applicable life limit and, within the thresholds and intervals, accomplishing all applicable maintenance tasks after its effective date, this proposed AD would require revising the ALS of the existing EMM or ICA and the existing approved maintenance or inspection program, as applicable, by incorporating the actions specified in paragraph (1) of EASA AD 2022–0203, within 90 days after the effective date of this AD. This proposed AD would not require compliance with paragraphs (2) through (5) of EASA AD 2022–0203.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 185 engines installed on helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hour × $85 per hour = $85	$0	$85	$15,725

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Safran Helicopter Engines, S.A.: Docket No. FAA–2023–1043; Project Identifier MCAI–2022–01295–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 29, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Safran Helicopter Engines, S.A. Model Arrius 2B2 engines.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM), introducing new and more restrictive tasks and limitations for certain life-limited parts. The FAA is issuing this AD to prevent failure of life-limited parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 90 days after the effective date of this AD, revise the ALS of the existing EMM or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, by incorporating the actions specified in paragraph (1) of European Union Aviation Safety Agency (EASA) AD 2022–0203, dated September 30, 2022 (EASA AD 2022–0203).

(2) The action required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Provisions for Alternative Actions and Intervals

After the actions required by paragraph (g) of this AD have been done, no alternative actions and associated thresholds and intervals, including life limits, are allowed unless they are approved as specified in the provisions of the ''Ref. Publication'' section of EASA AD 2022–0203.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, nternational Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your

request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0203, dated September 30, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0203, contact EASA, Konrad Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on May 9, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–10251 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1038; Project Identifier MCAI–2022–01584–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–17–09, which applies to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–17–09 continues to require the actions of AD 2021–16–03 and requires a modification to restore two independent layers of lightning strike protection. Since the FAA issued AD 2022–17–09, a determination was made that additional airplanes need to perform a modification to restore the two independent layers of lightning strike protection on the wing lower or upper cover. This proposed AD would continue to require the actions in AD 2022–17–09 and would require restoring the two independent layers of lightning strike protection, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 29, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1038; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For the EASA AD identified in this NPRM, you may contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–1038.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1038; Project Identifier MCAI–2022–01584–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as

private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022) (AD 2022–17–09), for certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–17–09 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0011, dated 21 January 2022, to correct an unsafe condition.

AD 2022–17–09 continues to require the actions of AD 2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021) (an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks, and corrective action) and requires a modification to restore two independent layers of lightning strike protection. The FAA issued AD 2022–17–09 to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane.

Actions Since AD 2022–17–09 Was Issued

Since the FAA issued AD 2022–17–09, EASA superseded AD 2022–0011, dated 21 January 2022, and issued AD 2022–0250, dated December 14, 2022, (EASA AD 2022–0250) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that occurrences have been reported from the A350 production line of missing or incorrect application of the lightning strike edge glow sealant protection at specific locations on the wing tanks. This sealant provides the second layer or protection to prevent stringer edge glow in case of lightning strike. This condition, if not addressed, combined with a pre-existing undetected incorrect installation of an adjacent fastener, could create an ignition source for the fuel vapor inside the tanks, which, in case of a lightning strike of high intensity in the immediate area, could result in ignition of the fuel-air mixture in the affected fuel tank and consequent loss of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1038.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2022–17–09, this proposed AD would retain all of the requirements of AD 2022–17–09. Those requirements are referenced in EASA AD 2022–0250, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0250 specifies procedures for an inspection for missing or incorrect application of the lightning strike edge glow sealant protection at certain locations in the wing tanks (discrepancies), and corrective action. Corrective actions include applying sealant in areas where sealant was found to be missing or incorrectly applied. EASA AD 2022–0250 also specifies procedures for a modification to restore two independent layers of lightning strike protection on the wing lower or upper cover. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2022–17–09. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0250 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0250 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0250 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0250 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0250. Service information required by EASA AD 2022–0250 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–1038 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2022–17–09	Up to 122 work-hours × $85 per hour = $10,370.	Up to $500	Up to $10,870	Up to $336,970.
New proposed actions (modification) ...	Up to 103 work-hours × $85 per hour = $8,775.	$500	Up to $9,255	Up to $286,905.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	$0	$85

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) AD 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–1038; Project Identifier MCAI–2022–01584–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 29, 2023.

(b) Affected ADs

This AD replaces AD 2022–17–09, Amendment 39–22147 (87 FR 64375, October 25, 2022) (AD 2022–17–09).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0250, dated December 14, 2022 (EASA AD 2022–0250).

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of the incorrect application of lightning strike edge glow sealant protection at specific locations on the wing tanks, and a determination that additional airplanes need to perform a modification to restore two independent layers of lightning strike protection on the wing lower or upper cover. The FAA is issuing this AD to address missing or incorrectly applied sealant, which in combination with an undetected incorrect installation of an adjacent fastener and a lightning strike in the immediate area, could result in ignition of the fuel-air mixture inside the affected fuel tanks and loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0250.

(h) Exceptions to EASA AD 2022–0250

(1) Where EASA AD 2022–0250 refers to October 27, 2020 (the effective date of EASA AD 2020–0220), this AD requires using September 30, 2021 (the effective date of AD

2021–16–03, Amendment 39–21665 (86 FR 47555, August 26, 2021)).

(2) Where EASA AD 2022–0250 refers to February 4, 2022 (the effective date of EASA AD 2022–0011), this AD requires using November 29, 2022 (the effective date of AD 2022–17–09).

(3) Where EASA AD 2022–0250 refers to its effective date, this AD requires using the effective date of this AD.

(4) Where paragraph (1) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after 27 October 2020 [the effective date of EASA AD 2020–0220],'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(4)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after September 30, 2021 (the effective date of AD 2021–16–03).

(ii) Within 12 months after September 30, 2021 (the effective date of AD 2021–16–03).

(5) Where paragraph (3) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after 04 February 2022 [the effective date of EASA AD 2022–0011],'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(5)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after November 29, 2022 (the effective date of AD 2022–17–09).

(ii) Within 12 months after November 29, 2022 (the effective date of AD 2022–17–09).

(6) Where paragraph (3) of EASA AD 2022–0250 refers to ''discrepancies,'' for this AD, discrepancies include missing or incorrectly applied sealant.

(7) Where paragraph (4) of EASA AD 2022–0250 gives a compliance time of ''the next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this [EASA] AD,'' for this AD, the compliance time is the later of the times specified in paragraphs (h)(7)(i) and (ii) of this AD.

(i) The next scheduled maintenance tank entry, or before exceeding 78 months since Airbus date of manufacture, whichever occurs first after the effective date of this AD.

(ii) Within 2 months after the effective date of this AD.

(8) Where the applicability and group definitions in EASA AD 2022–0250 specify manufacturer serial numbers (MSN) in certain service information, replace the text ''the inspection SB'' with ''Airbus Service Bulletin A350–57–P067, dated September 17, 2020.''

(9) Where the applicability and group definitions in EASA AD 2022–0250 specify manufacturer serial numbers (MSN) in certain service information, replace the text ''the modification SB1'' with ''Airbus Service Bulletin A350–57–P070, Revision 1, dated March 14, 2022.''

(10) Where the applicability and group definitions in EASA AD 2022–0250 specify manufacturer serial numbers (MSN) in certain service information, replace the text ''the modification SB2'' with ''Airbus Service Bulletin A350–57–P072, dated June 24, 2022; Airbus Service Bulletin A350–57–P073, dated June 24, 2022; or Airbus Service Bulletin A350–57–P074, dated June 24, 2022; as applicable.''

(11) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0250.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0250, dated December 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0250, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on May 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–10109 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0664; FRL–5925.1–01–OAR]

RIN 2060–AV58

National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Taconite Iron Ore Processing Plants, as required by the Clean Air Act (CAA). To ensure that all emissions of hazardous air pollutants (HAP) from sources in the source category are regulated, the EPA is proposing emission standards for mercury. In addition, the EPA is proposing to revise the existing emission standards for hydrogen chloride and hydrogen fluoride.

DATES:

Comments. Comments must be received on or before June 29, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of

Management and Budget (OMB) receives a copy of your comments on or before June 14, 2023.

Public hearing: If anyone contacts us requesting a public hearing on or before May 22, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2017–0664, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2017–0664 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0664, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact David Putney, Sector Policies and Programs Division (D243–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2016; email address: *putney.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the hearing will be held via virtual platform on May 30, 2023. The hearing will convene at 10 a.m. Eastern Time (ET) and will conclude at 4 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous.*

If a public hearing is requested, the EPA will begin registering speakers for the hearing no later than 1 business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be May 30, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing. However, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *putney.david@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by May 22, 2023. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0664. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, 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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0664. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0664. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Preamble acronyms and abbreviations. Throughout this preamble the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1–BP 1-bromopropane
ACI activated carbon injection
BTF beyond-the-floor
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
ESP electrostatic precipitator
FR Federal Register
HAP hazardous air pollutant(s)
HCl hydrochloric acid
HF hydrogen fluoride
HI hazard index
HQ hazard quotient
km kilometer
lb/LT pounds of mercury emitted per long ton of pellets produced
MACT maximum achievable control technology
MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP National Emission Standards for Hazardous Air Pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PM particulate matter
PRA Paperwork Reduction Act
RDL representative detection level
REL reference exposure level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
SBA Small Business Administration
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
TRIM.FaTE Total Risk Integrated Methodology. Fate, Transport, and Ecological Exposure model
UF uncertainty factor
UPL upper prediction limit
µg/m3 microgram per cubic meter
UMRA Unfunded Mandates Reform Act
URE unit risk estimate
VCS voluntary consensus standards

Organization of this document. The information in this preamble is organized as follows:

Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, State, local, and tribal Government entities would not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA–450/3–91–030; July 1992), the Taconite Iron Ore Processing source category includes any facility engaged in separating and concentrating iron ore from taconite, a low-grade iron ore to produce taconite pellets. The source category includes, but is not limited to, the following processes: liberation of the iron ore by wet or dry crushing and grinding in gyratory crushers, cone crushers, rod mills, and ball mills; pelletizing by wet tumbling with a balling drum or balling disc; induration using a straight grate or grate kiln indurating furnace; and finished pellet handling.

TABLE 1—NESHAP AND SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	NESHAP	NAICS code [1]
Taconite Iron Ore Processing	40 CFR part 63, subpart RRRRR	21221

[1] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall residual risk and technology review (RTR) program is available at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html.*

A memorandum showing the rule edits that would be necessary to incorporate the changes to 40 CFR part 63, subpart RRRRR proposed in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2017–0664). Following signature by the EPA Administrator, the EPA also will post a copy of this document to *https://www.epa.gov/stationary-sources-air-pollution/taconite-iron-ore-processing-national-emission-standards-hazardous.*

II. Background

A. What is the statutory authority for this action?

This action proposes to amend the NESHAP for Taconite Iron Ore Processing, which was previously amended when the EPA finalized the Residual Risk and Technology Review for this source category on July 28, 2020.[1]

In the *Louisiana Environmental Action Network* v. *EPA* (*LEAN*) decision issued on April 21, 2020, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the EPA has an obligation to address unregulated emissions from a major source category when the Agency conducts the 8-year technology review required by CAA section 112(d)(6).[2] This proposed rule addresses currently unregulated emissions of HAP from the Taconite Iron Ore Processing source category. Emissions data collected from the exhaust stacks of existing taconite indurating furnaces indicate that mercury (Hg) is emitted from the source category. However, mercury emissions from the Taconite Iron Ore Processing source category are not regulated under the existing Taconite Iron Ore Processing NESHAP. Therefore, the EPA is proposing new standards that reflect MACT for mercury emitted from taconite indurating furnaces, pursuant to CAA sections 112(d)(2) and (3). We are also proposing to modify the existing emissions standards for hydrochloric acid (HCl) and hydrofluoric acid (HF) pursuant to CAA section 112(d)(6). CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less often than every 8 years. Based on new information, we are proposing to revise the technology review completed in 2020 by proposing revised HCl and HF standards at this time.

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The NESHAP for Taconite Iron Ore Processing (codified at 40 CFR part 63, subpart RRRRR) regulates HAP emissions from new and existing taconite iron ore processing plants that are major sources of HAP. Taconite iron ore processing plants separate and concentrate iron ore from taconite, a low-grade iron ore containing 20- to 25-percent iron, and produce taconite pellets, which are 60- to 65-percent iron. Taconite iron ore processing includes crushing and handling of the crude ore, indurating, and finished pellet handling.

The Taconite Iron Ore Processing NESHAP applies to each new or existing ore crushing and handling operation, ore dryer, pellet indurating furnace, and finished pellet handling operation at a taconite iron ore processing plant that is (or is part of) a major source of HAP emissions. There are currently eight taconite iron ore processing plants in the United States: six facilities are located in Minnesota and two are located in Michigan. While the Empire Mining facility in Michigan maintains an air quality permit to operate, the facility has been indefinitely idled since 2016. Therefore, the Empire Mining facility is not included in any analyses (*e.g.,* expected emissions, estimated cost impacts, estimated emission reductions) associated with this proposed rulemaking. A different taconite facility, the Northshore Mining facility located in Minnesota, has been temporarily idled since 2022, but is expected to resume operations as early as Spring 2023. Therefore, we included the

[1] 85 FR 45476; July 28, 2020.

[2] Louisiana Environmental Action Network (LEAN) v. EPA, 955 F.3d 1088 (D.C. Cir. 2020).

Northshore Mining facility in the analyses conducted for this rulemaking.

Indurating furnaces represent the most significant source of HAP emissions from the Taconite Iron Ore Processing source category. The indurating furnaces are responsible for approximately 99 percent of total HAP emissions from this source category. Indurating furnaces emit acid gases, mercury and other metal HAP (*e.g.,* arsenic, chromium, nickel) that are present in the taconite ore and sometimes in the fuel (such as coal) fed into the furnaces, and small amounts of organic HAP (*e.g.,* formaldehyde). The acid gases include HCl and HF and are formed when chlorine and fluorine compounds are released from the raw materials during the indurating process and combine with moisture in the exhaust stream.

The existing emission limits consist of particulate matter (PM) limits, which serve as a surrogate for particulate metal HAP emissions; PM also serves as a surrogate for HCl and HF. Table 2 lists the emission standards that currently apply to taconite iron ore processing facilities subject to 40 CFR part 63, subpart RRRRR. The current NESHAP also includes work practice standards to address organic HAP emissions and fugitive emissions.

TABLE 2—CURRENT PM STANDARDS FOR TACONITE IRON ORE PROCESSING

Affected source	Affected source is new or existing	PM emission limits (gr/dscf) [1]
Ore crushing and handling emission units	Existing	0.008
	New	0.005
Straight grate indurating furnace processing magnetite	Existing	0.01
	New	0.006
Grate kiln indurating furnace processing magnetite	Existing	0.01
	New	0.006
Grate kiln indurating furnace processing hematite	Existing	0.03
	New	0.018
Finished pellet handling emission units	Existing	0.008
	New	0.005
Ore dryer	Existing	0.052
	New	0.025

[1] gr/dscf = grains per dry standard cubic foot.

The taconite iron ore processing NESHAP also regulates fugitive emissions from stockpiles (including uncrushed and crushed ore and finished pellets), material transfer points, plant roadways, tailings basins, pellet loading areas, and yard areas. Fugitive emissions must be controlled using the work practices specified in a facility's fugitive dust emissions control plan.

The EPA previously conducted a residual risk and a technology review pursuant to CAA sections 112(f)(2) and 112(d)(6), respectively (Docket Item No. EPA–HQ–OAR–2017–0664–0164). The EPA published the RTR proposed rule on September 25, 2019 (84 FR 50660), and the RTR final rule on July 28, 2020 (85 FR 45476). In the final rule, the EPA concluded that the risks associated with HAP emissions from taconite iron ore processing were acceptable and that the current NESHAP provides an ample margin of safety to protect public health. In the 2020 final rule, the EPA concluded that there were no developments in practices, processes, or control technologies that would warrant revisions to the standards. Therefore, no changes were made to the emissions standards as part of that action. However, the 2020 rulemaking removed the exemptions for periods of startup, shutdown, and malfunction (SSM), included provisions requiring electronic reporting, and made some other minor changes to the NESHAP.

C. What data collection activities were conducted to support this action?

Prior to developing the initial MACT standards for the Taconite Iron Ore Processing source category, which were finalized in 2003 (68 FR 61868; October 30, 2003), the EPA collected information on the emissions, operations, and location of taconite iron ore processing facilities. To inform the development of the 2019 RTR proposed rule, we obtained data from the EPA's 2014 National Emissions Inventory (NEI) database (*https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data*) and supplemental information submitted by industry. Data on the numbers, types, dimensions, and locations of the emission points for each facility were obtained from the NEI, state agencies, Google Earth™, and taconite iron ore processing industry staff. To inform this current action, in 2022, pursuant to CAA section 114, the EPA sent an information request (hereinafter ''2022 CAA section 114 information request'') to seven facilities in the source category to obtain updated information about taconite iron ore processing facilities. (The EPA did not send an information request to the Empire Mining facility since, as discussed in section II.B of this preamble, above, that facility has been indefinitely idled since 2016.) The 2022 CAA section 114 information request consisted of a questionnaire and stack testing requirements. The questionnaire was used to collect information on the location and number of indurating furnaces, production throughput, types of pellets produced, types and quantities of fuels burned, information on air pollution control devices and emission points, historical test data, and other documentation (*e.g.,* title V permits). Two companies (U.S. Steel Corporation and Cleveland-Cliffs Incorporated) completed the questionnaire for which they reported data for seven major source facilities.[3]

In addition to the questionnaire, the EPA required each taconite iron ore processing facility, with the exception of the Empire Mining facility, to complete stack testing of one or more representative indurating furnaces for the following pollutants: filterable PM, metal HAP, and the acid gases HCl and HF.[4] EPA Method 5 was used to measure filterable PM, EPA Method 29 was used to measure metal HAP emissions, and EPA Method 26A was

[3] As discussed in section II.B, this does not include the Empire Mining facility, which has been indefinitely idled since 2016.

[4] The EPA did not require the Empire Mining facility to submit stack testing because the facility has been indefinitely idled since 2016.

used to measure HCl and HF emissions. Six facilities completed the required stack testing and submitted emissions data for a total of seven indurating furnaces.[5]

In this action, the EPA used the emissions data collected from the 2022 CAA section 114 information request, as well as results from previous stack tests completed from 2014 through 2021 to develop proposed MACT standards for mercury, pursuant to CAA sections 112(d)(2) and (3).[6] We also used the emissions data for HCl and HF collected from the 2022 CAA section 114 information request to inform proposed revisions to the existing emissions standards for these acid gases, pursuant to CAA section 112(d)(6). The data collected and considered are available in the docket for this action. In addition, the data collection and analyses for this action are described in detail in two documents, *Maximum Achievable Control Technology (MACT) Analysis for Proposed Mercury Standards for Taconite Iron Ore Indurating Furnaces* and *Revised Technology Review of Acid Gas Controls for Indurating Furnaces in the Taconite Iron Ore Processing Source Category,* both of which are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

D. What other relevant background information and data are available?

In addition to the 2022 CAA section 114 information request discussed in section II.C. of this preamble, the EPA also reviewed the information sources listed below to help inform the development of the proposed MACT standards for mercury and to determine whether there have been developments in practices, processes, or control technologies for taconite iron ore processing facilities pursuant to CAA section 112(d)(6). These additional information sources include the following:

- Emissions tests and reports for testing completed between 2014 and 2021 on 11 indurating furnaces located at six plants in Minnesota. Stack tests on nine furnaces used EPA Method 29 to measure mercury emissions, stack tests on three furnaces used the Ontario Hydro method (ASTM D6784–16), and stack tests on one furnace used EPA Method 29 and the Ontario Hydro method.
- Data on the variation of the concentration of mercury in the ore from the mines used by taconite iron ore processing facilities provided by industry and the American Iron and Steel Institute (the industry association representing the industry in the affected NAICS category and their members).
- Site-specific Mercury Reduction Plans and mercury control technology evaluations required by Minnesota state regulations.[7] These documents include Mercury Reduction Plans for Northshore Mining Company in Silver Bay, Minnesota and Minorca Mine, Inc. in Virginia, Minnesota; and technology evaluations for the following four plants: Hibbing Taconite Company in Hibbing Minnesota; United Taconite LLC in Forbes Minnesota, U.S. Steel—Minntac in Mountain Iron, Minnesota and U.S. Steel—Keetac in Keewatin, Minnesota.

Copies of these materials are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the issues addressed in this proposal.

A. How did we address unregulated pollutants?

In evaluating the Taconite Iron Ore Processing source category and emissions data collected in support of the 2020 RTR and through the 2022 CAA section 114 information request, we identified mercury as a HAP emitted from facilities in the source category. Mercury, which is emitted primarily in a gaseous form (not as a particle), is not regulated under the existing standards for the source category. Emissions data from stack tests conducted since 2014 indicate mercury is emitted by indurating furnaces at taconite iron ore processing facilities. Mercury was the only HAP identified by the EPA that is not regulated under the existing standards for this source category. The EPA has a ''clear statutory obligation to set emissions standards for each listed HAP'' emitted from a source category.[8] In this action, we are proposing emissions limits for mercury pursuant to CAA sections 112(d)(2) and (3) for new and existing indurating furnaces.

Pursuant to CAA section 112(d)(3), since there are fewer than 30 sources in the category, the minimum standards for existing sources are calculated based on the average performance of the best-performing five sources in the source category, taking into consideration the variability of HAP emissions from the emission sources. This is commonly referred to as the ''MACT floor.'' The MACT floor for new sources is based on the single best-performing source, with a similar consideration of variability in emissions from the best-performing source. The MACT floor for new sources cannot be less stringent than the emissions performance that is achieved in practice by the best-controlled similar source. To account for variability in the mercury emissions from indurating furnaces, we calculated the MACT floors using the 99-percent Upper Prediction Limit (UPL) approach from the stack test data collected for the 2022 CAA section 114 information request and data from the stack tests completed on indurating furnaces from 2014 through 2021.

The UPL approach addresses variability of emissions data from the best-performing source or sources in setting MACT standards. The UPL also accounts for uncertainty associated with emission values in a dataset, which can be influenced by components such as the number of samples available for developing MACT standards and the number of samples that will be collected to assess compliance with the emission limit. The UPL approach has been used in many environmental science applications. As explained in more detail in the memorandum *Use of Upper Prediction Limit for Calculating MACT Floors* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664), the EPA uses the UPL approach to reasonably estimate the emissions performance of the best-performing source or sources to establish MACT floor standards.

In addition to calculating the MACT floor, the EPA must examine more stringent ''beyond-the-floor'' (BTF) regulatory options to determine MACT.

[5] The EPA initially planned to require the Northshore Mining facility to conduct stack testing. However, the facility's indurating furnaces were idled during the period of the information collection and are not expected to return to operation until at least spring 2023. As a result, we ultimately did not require the Northshore Mining facility to complete stack testing within the timeframe available before the Administrator's signature of this proposed rule.

[6] Due to the relative scarcity of stack test data available from the taconite iron ore processing facilities, additional mercury emissions data from testing performed from 2014 through 2021 at facilities listed in the 2022 CAA section 114 information request were also used in development of the MACT standards for mercury. This testing was performed under similar conditions and testing methodologies that were requested in the 2022 CAA section 114 information request.

[7] The Mercury Reduction Plans and mercury control technology evaluations were submitted to the Minnesota Pollution Control Agency (MPCA) in 2018 in response to a Minnesota regulation (see Minn. R. 7007.0502) requiring mercury emission reductions of 72 percent from 2008 or 2010 emission levels by January 1, 2025. The regulation requires a mercury reduction plan for sources that emit more than 3 pounds of mercury (or 5 pounds for industrial boilers). We also considered the MPCA responses to the industry submittals.

[8] *National Lime* v. *EPA,* 233 F. 3d 625, 634 (D.C. Cir. 2000).

Unlike the MACT floor's minimum stringency requirements, the EPA must consider various impacts of the more stringent regulatory options in determining whether the proposed MACT standards should reflect beyond-the-floor requirements. If the EPA concludes that the more stringent regulatory options have unreasonable cost, non-air quality health and environmental, and/or energy impacts, the EPA selects the MACT floor as MACT. However, if the EPA concludes that impacts associated with BTF levels of control are reasonable in light of additional emissions reductions achieved, the EPA selects those BTF levels of control as MACT.

The methodology used to develop the new mercury standards is described in detail in the document, *Maximum Achievable Control Technology (MACT) Analysis for Proposed Mercury Standards for Taconite Iron Ore Indurating Furnaces,* located in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). The results and proposed decisions based on the analyses performed pursuant to CAA sections 112(d)(2) and (3) are presented in section IV.A of this preamble.

B. How did we perform the technology review?

Emissions data collected as part of the 2022 CAA section 114 information request indicated that indurating furnaces using wet scrubbers to meet the NESHAP emissions standards have significantly lower acid gas emissions than those using other types of PM control. These emissions data were not available to us at the time of the 2020 technology review. Based on the new data, we determined it was appropriate to revisit the existing standards for HCl and HF in light of the air pollution control technologies available to control HCl and HF emissions from indurating furnaces.

When we conduct technology reviews, we primarily focus on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is ''necessary'' to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a ''development'':

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed (or last updated) the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls. See sections II.C and II.D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

IV. Analytical Results and Proposed Decisions

A. What are the results of our analyses of unregulated pollutants and how did we establish the proposed MACT standards?

In this action, we are proposing mercury MACT standards for new and existing indurating furnaces, pursuant to CAA sections 112(d)(2) and (3). The results and proposed decisions based on the analyses performed pursuant to CAA sections 112(d)(2) and (3) are presented below.

Before calculating the MACT floor, we evaluated the available data on the design and operating characteristics of indurating furnaces to determine whether subcategorization was warranted. For each stack test, we collected information on the type of indurating furnace tested (grate kiln or straight grate indurating furnace), fuels burned, ore processed (magnetite or hematite), and the type and quantity of taconite pellets produced.

Regarding furnace type, there are eight straight grate indurating furnaces and 13 grate kiln indurating furnaces located at taconite iron ore processing facilities in the United States. This includes three grate kiln indurating furnaces at the Empire Mining facility. However, as discussed in section II.B, above, the Empire Mining facility has been indefinitely idled since 2016 and its three grate kiln indurating furnaces are not included in any analyses associated with this proposed action. Grate kiln furnaces consist of a moving grate and rotary kiln. Unfired (green) pellets are placed directly on a travelling grate which transports the pellets through a dryer and pre-heater to the rotary kiln, where induration occurs. Straight grate furnaces consist of a continuously moving grate that carries the green pellets through the furnace's different temperature zones. Unlike the grate kiln furnace where the green pellets are placed directly on the grate, the green pellets in a straight grate furnace are placed on a 4- to 6-inch layer of previously fired pellets known as the hearth layer. The hearth layer allows for even air flow and protects the grate from the heat generated by the oxidation of the taconite pellets during induration. We compared the mercury emissions data for straight grate furnaces with the emissions data for grate kiln furnaces to determine whether there was a difference in emissions attributable to differences in furnace design. We currently have mercury emissions data from stack testing completed on five straight grate furnaces and nine grate kiln furnaces. We compared the average emissions in pounds of mercury per long ton of pellets produced (lb/LT) from grate kiln furnaces with that of straight grate furnaces and found the average was slightly higher for grate kiln furnaces (1.98×10^{-5} lb/LT for grate kiln furnaces versus 1.80×10^{-5} lb/LT for straight grate furnaces). We next ranked the 14 furnaces from lowest- to highest-emitter and found that one straight grate furnace had an emission rate lower than any of the grate kiln furnaces, while the other four straight grate furnaces had emissions rates comparable to those of grate kiln furnaces. We propose to conclude based on this information that subcategorizing based on furnace types is not warranted.

We also evaluated whether subcategorizing based on the type of ore processed would be appropriate. In the United States, there are two types of iron ore processed at taconite iron ore processing facilities: magnetite and hematite. Only one of the seven taconite plants processes hematite ore (Tilden Mining located in Michigan). This plant

operates two grate kiln furnaces. We currently have mercury emissions data for only one of the two grate kiln furnaces located at this plant. The mercury emission rate for this grate kiln furnace was lower than all but one of the furnaces processing magnetite ore. Since we have emissions data for only one of the two grate kiln furnaces currently processing hematite, we propose to conclude the data set is too limited to justify subcategorizing by ore type.

Next, we evaluated whether subcategorizing by fuel type would be appropriate. Most indurating furnaces can burn natural gas, coal, fuel oil, wood, and/or a fuel mixture (*e.g.,* coal and natural gas). However, responses to the 2022 CAA section 114 information request indicated that natural gas is the most common fuel used in indurating furnaces, with natural gas reported as the primary fuel for 14 furnaces. A natural gas and wood mix was used as the primary fuel for three furnaces, while natural gas and coal or coke blend was reported as the primary fuel for one furnace. Most of the furnaces were burning natural gas during the testing conducted pursuant to the 2022 CAA section 114 information request and most stack test data available to us are for furnaces burning natural gas. As part of the 2022 CAA section 114 information request, one facility completed two stack tests—one when burning only natural gas and one when co-firing with natural gas and coal. The stack tests were completed on the same furnace and the results showed a slight increase in mercury emissions from 2.08×10^{-5} lb/LT when burning only natural gas to 2.29×10^{-5} lb/LT when burning a mixture of natural gas and coal. We would expect higher mercury emissions from furnaces burning coal because coal is known to contain mercury and to emit mercury when burned. We would also expect mercury emissions from coal to vary based on the quantity of coal burned and the mercury content of the coal burned. However, based on the 2022 stack testing described above, the contribution of mercury from coal combustion to the overall mercury emissions appears to be relatively small. The 2022 stack test data suggests that most of the mercury emissions arise from mercury released from the taconite ore during induration. We expect that this result is likely due primarily to the relatively small mass of coal consumed compared to the mass of green pellets processed. For the furnace tested in 2022 while co-firing natural gas and coal, the mass of green pellets processed per hour was over 110 times greater than the mass of coal burned per hour. Based on this information, we do not believe that variations in mercury emissions are attributable to fuel-type and propose to conclude that subcategorizing based on fuel-type is not warranted.

Finally, we evaluated whether subcategorizing based on the type of taconite pellets produced would be appropriate. Taconite iron ore processing plants produce two types of pellets: standard (also known as acid) pellets and fluxed pellets. Standard pellets are produced by mixing the concentrated ore with a binding agent (typically bentonite). Fluxed pellets are produced by adding a fluxing agent (typically limestone and/or dolomite) in addition to the binding agent. Based on the information reported in responses to the 2022 CAA section 114 information request, 15 of the 18 indurating furnaces produce both standard and fluxed pellets, whereas three furnaces located at two plants produce exclusively fluxed pellets. A comparison of the mercury emissions data indicated no significant difference in mercury emissions based on pellet type produced. The maximum measured mercury emissions were 2.54×10^{-5} lb/LT while producing flux pellets and 2.51×10^{-5} lb/LT while producing standard pellets. Based on this information, we propose to conclude that subcategorization based on pellet type is not appropriate.

Overall, based on our evaluation of the data, as discussed above, we are proposing that subcategorization is not appropriate for these emission sources (*i.e.,* the indurating furnaces) when considering mercury emissions.

To determine the proposed MACT standards for mercury for existing indurating furnaces in the source category, we evaluated two potential options as follows: (1) setting standards at the MACT floor for new and existing indurating furnaces; and (2) setting beyond-the-floor MACT standards which are more stringent than the MACT floors for new and existing indurating furnaces.

Under Option 1, mercury limits for new and existing indurating furnaces would be set at the MACT floor level, based on the 99-percent UPL, and would apply individually to each furnace at each facility. We calculated the mercury MACT floor limits in units of pounds of mercury per long ton of taconite pellets produced (lb/LT) for existing sources based on the five best performing furnaces and for new sources based on the best performing furnace. The result was a MACT floor limit of 1.4×10^{-5} lb/LT for existing sources and a MACT floor limit of 3.1×10^{-6} lb/LT for new sources.

We compared the mercury emission rates for each existing indurating furnace to the MACT floor limit (*i.e.,* 1.4×10^{-5} lb/LT) to estimate the number of existing indurating furnaces that would require improved performance to meet the MACT floor limits. The emissions rates for the 14 indurating furnaces for which we have test data were based on the average mercury emissions rates measured during stack testing for each of those furnaces. For the remaining four indurating furnaces for which stack test data are not available,[9] we used the mercury emissions rates determined through stack testing on indurating furnaces of the same size and design located at the same plant. Based on this analysis, we estimate that 11 existing indurating furnaces would require improved performance to comply with the mercury MACT floor limit and seven furnaces would not require improved performance. We determined that activated carbon injection (ACI) with a high efficiency venturi scrubber would provide the level of mercury reduction required for the 11 existing furnaces to achieve compliance with the proposed MACT floor.

Using ACI with a high efficiency venturi scrubber on the 11 furnaces we expect would require additional controls would result in a combined estimated reduction of 462 pounds of mercury per year from these sources. We estimate that the total capital investment to retrofit 11 existing furnaces with these controls would be $129 million and the total annual costs would be $71 million per year.

We are proposing to set mercury standards at the MACT floor for new and existing sources, as described above. We request comment on this proposed approach.

Under Option 2, we evaluated setting beyond-the-floor MACT standards that are more stringent than the MACT floor standards discussed in Option 1. We considered limits at levels of 10 percent more stringent than the MACT floor, 20 percent more stringent than the MACT floor, 30 percent more stringent than the MACT floor, and 40 percent more stringent than the MACT floor. We considered increased stringency at 10 percent intervals up to 40 percent based on engineering judgement that such intervals were appropriate due to the expected margins of error associated with estimated control efficiencies and required carbon injection rates. Using

[9] These include one indurating furnace at the Tilden facility and three indurating furnaces at the Northshore facility.

smaller intervals would have resulted in overlap of the margins of error between intervals and using larger intervals would have resulted in less precision of results. Therefore, we decided to use 10 percent intervals. Nevertheless, we solicit comments and information regarding this approach.

We estimate that ACI with high efficiency venturi scrubbers could achieve standards up to 30 percent more stringent than the MACT floor, but at increased rates of carbon injection as the standards increase in stringency from 10 percent more stringent than the MACT floor up to 30 percent more stringent than the MACT floor. Based on our analysis, we expect that for standards that are at least 40 percent more stringent than the MACT floor, a baghouse would be required after the wet scrubber for one facility (Keetac). Of the beyond-the-floor options considered, we estimate that the most cost-effective beyond-the-floor option would be to set the MACT standard for existing furnaces at a level 30 percent more stringent than the MACT floor (*i.e.,* a MACT standard of 8.4×10^{-6} lb/LT). Under this scenario, we estimate that 11 of the 18 existing indurating furnaces would require additional controls to meet the beyond-the-floor limit, and that these 11 furnaces could meet the beyond-the-floor limit using ACI (at a higher rate than needed to meet the 10 percent and 20 percent levels) with a high efficiency venturi scrubber. Under this approach, we estimate a total reduction of 621 pounds of mercury per year from the source category at an estimated incremental cost-effectiveness of about $46,000 per pound of mercury removed to go beyond the MACT floor. This is above the $/pound of mercury reduced that we have historically found to be reasonable and cost-effective when considering beyond-the-floor options for regulating mercury emissions. Further, our analysis indicates that some new furnaces (*e.g.,* if a new furnace was installed at the Keetac facility) would require ACI plus baghouses to comply with the MACT floor standard and that any increase in stringency of the standard (*i.e.,* any beyond-the-floor standard) for new sources, would also result in cost-effectiveness, measured in $/pound of mercury removed, that is higher on a $/pound basis than cost-effective numbers that the EPA has historically considered reasonable when considering beyond-the-floor options for regulating mercury emissions. We propose to conclude that requiring new or existing indurating furnaces to meet beyond-the-floor limits is not reasonable based on the estimated capital and operating costs and cost-effectiveness.

A detailed description of the analyses of mercury emissions, including consideration of subcategorization, the calculation of the MACT floor limits for new and existing furnaces, and the analysis of beyond-the-floor options (including the estimated costs, reductions and cost effectiveness of each option), are included in the memorandum, *Maximum Achievable Control Technology (MACT) Analysis for Proposed Mercury Standards for Taconite Iron Ore Indurating Furnaces.* A description of the APCDs that we expect would be necessary to reduce emissions and the estimated costs of those controls are included in the memorandum *Development of Impacts for the Proposed Amendments to the NESHAP for Taconite Iron Ore Processing.* Copies of these memoranda are available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

1. What alternative compliance provisions are being proposed?

As discussed in section IV.A, we are proposing to set mercury emission standards at the MACT floor level for new and existing sources that would apply to indurating furnaces on a unit-by-unit basis. We are also proposing an emissions averaging compliance alternative that would allow owners and operators of taconite iron ore processing facilities to demonstrate compliance by averaging mercury emissions across existing indurating furnaces located at the same taconite facility. Under this emissions averaging compliance alternative, a taconite iron ore processing facility with more than one indurating furnace may average mercury emissions across the indurating furnaces located at the facility provided that the mercury emissions averaged across all indurating furnaces at the facility do not exceed a mercury emission limit of 1.26×10^{-5} lb/LT, on a production-weighted basis. This emission limit reflects a 10 percent adjustment factor to the MACT floor standard; according to our analysis, we expect this emission limit would result in mercury reductions greater than those achieved by application of the MACT floor on a unit-by-unit basis.

We are proposing this emissions averaging compliance alternative for existing indurating furnaces because we expect it will result in a greater level of mercury reduction than the unit-by-unit MACT floor limit at a lower cost per pound of mercury removed, while also providing compliance flexibility. The proposed emissions averaging compliance alternative is available only to existing indurating furnaces at taconite iron ore processing facilities. New or reconstructed indurating furnaces would be subject to the unit-by-unit MACT floor standards as discussed in section IV.A above, and would be required to comply with those standards on a unit-by-unit basis. Specifically, we are proposing that indurating furnaces constructed or reconstructed after May 15, 2023 would be considered new sources and would be required to comply with the proposed MACT floor emission standard for new sources of 3.1×10^{-6} lb/LT.

We expect that the United Taconite, Hibbing, and Minntac taconite iron ore processing facilities may elect to utilize this emissions averaging compliance alternative. If these three taconite iron ore processing facilities utilize the emissions averaging compliance alternative, then we expect that six of the 18 indurating furnaces in the source category [10] would require the addition of ACI with a venturi scrubber. We estimate that this emissions averaging compliance alternative would result in total emissions reductions of 497 pounds of mercury per year, assuming that these three taconite iron ore processing facilities elect to use the emissions averaging compliance alternative to demonstrate compliance with the standards. We estimate that, under this emissions averaging compliance alternative, the total capital investment for industry would be $90 million and total annual costs would be $52 million.

We recognize that the EPA has generally imposed limits on the scope and nature of emissions averaging programs. These limits include: (1) no averaging between different types of pollutants; (2) no averaging between sources that are not part of the same affected facility; (3) no averaging between individual sources within a single major source if the individual sources are not subject to the same NESHAP; and (4) no averaging between existing sources and new sources. The emissions averaging allowed under the proposed emissions averaging compliance option in this action fully satisfies each of these criteria. First, emissions averaging would only be allowed for mercury emissions. Second, emissions averaging would only be permissible among individual existing affected units at a single stationary source (*i.e.,* the facility). Third,

[10] As discussed in section II.B, this excludes the three grate kiln indurating furnaces at the Empire Mining facility.

emissions averaging would only be permitted among indurating furnaces at the facility. Lastly, new affected sources could not use emissions averaging for compliance purposes. Accordingly, we have concluded that the averaging of emissions across affected units at a single taconite facility is consistent with the CAA.

We are also proposing to require that each facility that intends to utilize the emissions averaging compliance alternative develop an emissions averaging plan, which would provide additional assurance that the necessary criteria will be followed. We are proposing to require that a facility's emissions averaging plan include the identification of: (1) all units in the averaging group; (2) the control technology installed; (3) the process parameter(s) that will be monitored; (4) the specific control technology or pollution prevention measure to be used; (5) the test plan for the measurement of the HAP being averaged; and (6) the operating parameters to be monitored for each control device. A state, local, or tribal regulatory agency that is delegated authority for this rulemaking could require the emissions averaging plan to be submitted or even approved before emissions averaging could be used. Upon receipt, the regulatory authority would not be able to approve an emissions averaging plan differing from the eligibility criteria contained in the proposed rule.

We are proposing an emissions averaging compliance alternative because we expect it will provide a more flexible and less costly alternative to controlling mercury emissions from the source category, and we expect it will result in greater annual reductions of mercury emissions from the source category than unit-by-unit compliance. We expect that the proposed emissions averaging compliance alternative as described above would not lessen the stringency of the overall MACT floor level of performance and would provide flexibility in compliance, cost, and energy savings to owners and operators. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will be no less stringent than unit-by-unit implementation of the MACT floor limits.

Under the proposed emissions averaging compliance alternative, we expect the 10 percent adjustment factor will ensure that the total quantity of mercury emitted from a facility's indurating furnaces will not be greater than if the facility's furnaces individually complied with the unit-by-unit MACT floor standards. We expect that the practical outcome of emissions averaging will be mercury emissions reductions equivalent to, or greater than, mercury reductions achieved through compliance with the MACT floor limits for each discrete indurating furnace on a unit-by-unit basis, and that the statutory requirement that the MACT standard reflect the maximum achievable emissions reductions would therefore be fully effectuated under this approach. We request comment on allowing sources to comply with the mercury MACT standards through the proposed emissions averaging compliance alternative. We also request comment on the appropriate adjustment factor to apply under this proposed compliance alternative.

2. What information did the EPA receive regarding mercury variation in taconite iron ore?

On February 14, 2023, the EPA received data from the American Iron and Steel Institute (AISI) and U.S. Steel Corporation (U.S. Steel) on the variation of mercury concentration within the taconite ore used by taconite iron ore processing facilities. U.S. Steel and AISI requested that these data be considered as one of the variability factors while developing the MACT standards for mercury emitted from indurating furnaces. AISI also suggested corrections to the mercury stack test emissions data that we used to develop the proposed MACT standards for mercury on March 13, 2023. On April 27, 2023, AISI and U.S. Steel also submitted suggestions on how to account for variations in mercury, chloride, and fluoride concentrations in taconite ore when developing standards for emissions of mercury, hydrogen chloride, and hydrogen fluoride from indurating furnaces. We did not have sufficient time prior to issuing this proposal to fully assess the information submitted but have made the submittals available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). Therefore, the MACT standards for mercury proposed in this action do not include consideration of this information submitted by AISI and U.S. Steel. We request comment on the submittals in general and on the data on the variation of mercury content in taconite ore and whether and to what extent this variation should be considered in the development of the MACT standards for mercury from indurating furnaces (see discussion in section IV.A. of this preamble).

B. What are the results of our technology review and what revisions to the MACT standards are we proposing?

The existing NESHAP for the taconite iron ore processing source category includes standards for HCl and HF that utilize PM as a surrogate for HCl and HF. As discussed below, however, we are proposing to change the way we regulate HCl and HF emissions from the source category based on a development in the industry. Specifically, we are proposing numerical emission limits for HCl and HF instead of relying on PM as a surrogate for emissions of these specific HAP.

This proposal is consistent with the EPA's authority pursuant to CAA section 112(d)(6) to take developments in practices, processes, and control technologies into account to determine if it is ''necessary'' to revise the MACT standards previously set by the EPA. In this proposal, we are using our discretion to revisit part of the 2020 technology review; our review is limited to developments pertaining to the regulation of HCl and HF. The reasons for this proposal are discussed below.

As described in section III.B of this preamble, the technology review for the 2020 Taconite Iron Ore Processing RTR rulemaking focused on identifying and evaluating potential developments in practices, processes, and control technologies that have occurred since the NESHAP was promulgated in 2003.[11] Based on the information available to us at the time the 2020 RTR was promulgated, we concluded there were no developments in practices, processes, and control technologies for indurating furnaces. However, as part of the 2022 CAA section 114 information request, we collected new data on HCl and HF emissions from seven indurating furnaces. Six of the furnaces tested were equipped with wet venturi scrubbers and one furnace was equipped with dry electrostatic precipitators (ESPs). The HCl and HF emissions data showed that wet venturi scrubbers consistently achieved lower HCl emissions compared to the furnaces using dry ESPs. The results for HF are less clear, but we still expect wet controls achieve better control of HF compared to dry controls because HF is quite soluble in water.

Based on our review of this new emission data and understanding of the chemistry of these compounds, the EPA

[11] For information on the technology review completed in 2020, see the memorandum ''*Final Technology Review for the Taconite Iron Ore Processing Source Category*,'' January 3, 2020 (available in the docket for this action; Docket Item ID No. EPA–HQ–OAR–2017–0664–0164).

is proposing amendments to the existing NESHAP, pursuant to CAA section 112(d)(6). The current NESHAP includes PM limits used as a surrogate for acid gas emissions. In this action, we are proposing that furnaces would be required to comply with the proposed numerical emission limits for HCl and HF, which would replace the use of PM emissions as a surrogate for emissions of HCl and HF from the source category.

The proposed revised HCl and HF emission limits for new and existing indurating furnaces were determined using a methodology similar to, but slightly different than, that used to develop the mercury emission limits. The mercury MACT floor limits were derived by calculating the UPL based on emissions test data for the top five performing (lowest emitting) sources pursuant to CAA section 112(d)(2)/(3). Since we are proposing a different approach to regulating HCl and HF limits from the approach in the current regulations, under the limited CAA section 112(d)(6) technology review, the objective was to calculate a proposed limit that reflects the performance (*i.e.,* level of emissions) of the taconite indurating furnaces that have wet venturi scrubbers (*i.e.,* the superior control technology for control of acid gases, especially HCl). Therefore, for existing furnaces, we used the emissions data from all six furnaces equipped with wet venturi scrubbers to calculate a UPL at the 99-percent confidence level for HCl and HF, which resulted in the following limits: 4.4×10^{-2} lb of HCl/LT and 1.2×10^{-2} lb of HF/LT. For new sources we used the emissions data from the best performing furnace to calculate a UPL at the 99-percent confidence level for HCl and HF, which resulted in the following limits: 4.4×10^{-4} lb of HCl/LT and 3.3×10^{-4} lb of HF/LT. Based on this data and methodology, for existing sources constructed or reconstructed before May 15, 2023, we are proposing limits of 4.4×10^{-2} lb of HCl/LT of taconite pellets produced and 1.2×10^{-2} lb of HF/LT of taconite pellets produced. For new sources constructed or reconstructed after May 15, 2023, we are proposing limits of 4.4×10^{-4} lb of HCl/LT of taconite pellets produced and 3.3×10^{-4} lb of HF/LT of taconite pellets produced.

We expect that all existing indurating furnaces would be able to comply with the proposed numerical HF limit for existing sources without the addition of new controls or control measures; we also expect that HF emissions from existing sources would incidentally be reduced by about 38 tons per year due to controls used to comply with the proposed HCl limits (see discussion below). We expect that most existing indurating furnaces would be able to comply with the proposed HCl limit for existing sources without the addition of new controls or control measures. However, we expect that new add-on controls would be necessary at two existing indurating furnaces (that is, the two indurating furnaces currently equipped with dry ESPs) to comply with the proposed HCl limit for existing sources. The estimated total capital costs for installing the add-on controls necessary to meet the proposed HCl limit for existing sources is $1.1 million, and the total annual costs are estimated to be $1.4 million. We estimate that HCl emissions would be reduced by 713 tons per year. This results in an estimated cost effectiveness of about $1,940 per ton of HCl removed. The results of the cost analyses indicate that the estimated cost effectiveness is within the range of values that the EPA has previously considered to be cost-effective for many different HAP. Detailed information on the methodology used to develop the proposed emission standards and costs are provided in the memorandum *Revised Technology Review of Acid Gas Controls for Indurating Furnaces in the Taconite Iron Ore Processing Source Category,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). We request comment on our proposal to change the way we regulate HCl and HF emissions from the source category. Specifically, we request comment on our proposal to directly regulate HCl and HF emissions from the source category and the numerical emission limits proposed for HCl and HF.

C. What performance testing are we proposing?

We are proposing that new and existing sources demonstrate compliance with the mercury, HCl, and HF standards by performing initial performance testing and that the performance testing be repeated at the same frequency as required for the existing PM standards (*i.e.,* at least twice per title V permit term; that is at least twice every 5 years as allowed under 40 CFR 63.9630). Existing sources constructed or reconstructed before May 15, 2023 would be required to demonstrate initial compliance no later than 180 calendar days after the compliance date. New sources constructed or reconstructed before May 15, 2023 would be required to complete the initial performance testing within 180 days after startup. We are proposing the performance tests for mercury be performed using EPA Method 29 and that performance tests for HCl and HF be performed using EPA Methods 26A. We considered allowing Method 30B as an alternative method for mercury performance testing. However, we expect that Method 30B may not work well at the low expected concentrations of mercury and that the relatively high PM in the sample might interfere with Method 30B. We request comment on whether to allow Method 30B as an alternative performance testing method for mercury.

During the initial and subsequent performance tests, we are proposing that testing be completed on every stack associated with each indurating furnace within 7 calendar days, to the extent practicable, such that the operating characteristics of the furnace and associated control device (where applicable) remain representative and consistent for the duration of the performance test and under normal operating conditions. These testing requirements are consistent with the testing requirements for PM in the existing NESHAP (see 40 CFR 63.9620 and 63.9630).

D. What operating limits and monitoring requirements are we proposing?

In addition to performance testing, we are proposing owners and operators establish operating limits for the parameters listed in Table 3 for each control device used to comply with the mercury, HCl, and HF limits. We are proposing to require owners and operators to establish dry sorbent injection rate operating limits for dry sorbent injection systems used to comply with the HCl and HF limits, activated carbon injection rates for activated carbon injection systems used to comply with mercury limits, and pH operating limits for wet scrubbers used to comply with the HCl and HF limits (in addition to the requirements in the current NESHAP to establish pressure drop and scrubber water flow rate for wet scrubbers used to comply with the PM limits). The operating limits would be established during the most recent performance testing where compliance with the emissions limit is demonstrated. Parametric monitoring would be required to ensure the control devices operate properly and the source complies with the emissions limits on a continuous basis. This approach is consistent with the current requirements for demonstrating compliance with the existing PM emissions limits. The operating limits for the parameters listed in Table 3 would be set as the average of the measured parameter during the three test runs of the most recent performance

test. Owners and operators would be required to comply with the existing provisions for installation, operation, and preventive maintenance of APCD and monitoring equipment. Owners and operators would be required to prepare a preventive maintenance plan, take corrective action if an air pollution control device exceeds the established operating limit, and prepare and keep records of calibration and accuracy checks of the continuous parameter monitoring systems (CPMS) to document proper operation and maintenance of each monitoring system.

TABLE 3—PROPOSED OPERATING LIMITS AND PARAMETRIC MONITORING REQUIREMENTS FOR DEMONSTRATING CONTINUOUS COMPLIANCE

For each . . .	Establish a minimum operating limit for . . .	Demonstrate continuous compliance by . . .
Wet Scrubber	pH	Maintain the daily average pH equal to or greater than the pH operating limit established during the most recent performance test.
Dry sorbent injection system	Sorbent injection	Maintain the daily average dry sorbent flow rate equal to or greater than the flow rate operating limit established during the most recent performance test.
Activated carbon injection	Activated carbon injection	Maintain the daily average activated carbon injection flow rate equal to or greater than the flow rate operating limit established during the most recent performance test.

E. What recordkeeping and reporting requirements are we proposing?

We are proposing facilities would be required to submit the notifications required in 40 CFR 63.9640; report the results of initial and subsequent compliance stack testing for mercury, HCl and HF; maintain monitoring records to demonstrate compliance with the proposed operating limits for air pollution control devices; comply with the recordkeeping requirements in 40 CFR 63.9642; and comply with the reporting requirements in 40 CFR 63.9641, including the requirement to report deviations from the proposed requirements in the semi-annual report and to submit corrective action reports. Facilities that elect to comply with the mercury emissions standard using emissions averaging would be required to also submit an implementation plan in accordance with the proposed provisions in 40 CFR 63.9623(d)(1); maintain a copy of the approved implementation plan; and maintain monthly records of the quantity of taconite pellets produced by each furnace included in the emission average and the calculated average mercury emissions.

F. What are the results of any risk analyses completed for this action?

In the July 28, 2020, final Taconite Iron Ore Processing RTR rule (85 FR 45476), the EPA conducted a residual risk assessment and determined that risk from the Taconite Iron Ore Processing source category was acceptable and the standards provided an ample margin of safety to protect public health (see Docket Item No. EPA–HQ–OAR–2017–0664–0163), and the EPA therefore did not promulgate standards to reduce risk further. Since the final rule, the EPA received new facility operation and HAP emissions data from all seven operational major source facilities through the 2022 CAA section 114 information request and facility stack testing. Specifically, these facilities completed stack testing and submitted emissions data for PM, metal HAP, HCl and HF for seven indurating furnaces. The EPA used the new emissions data that were collected to develop updated estimates of HAP emissions from indurating furnaces for each of these facilities. Detailed information on the new emissions data is provided in the memorandum *Emissions Data Collected in 2022 for Indurating Furnaces Located at Taconite Iron Ore Processing Plants,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

To determine whether these new HAP emissions estimates would significantly alter our previous estimates of the human health risk posed by the Taconite Iron Ore Processing source category, we performed a baseline (baseline means prior to any controls proposed in this action) risk analysis using the updated emissions. The methodologies used for this risk analysis are the same as those described in section III.C. of the preamble to the September 25, 2019, proposed rule ''National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Residual Risk and Technology Review'' (84 FR 50660). We present the results of the new risk analysis in Table 4 of this preamble (rows labelled ''Updated Source Category'' and ''Updated Whole Facility'') and in more detail in the document *Taconite Iron Ore Processing 2023 Risk Analysis Report,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). The risk analysis results from the July 28, 2020, final Taconite Iron Ore Processing RTR rule (85 FR 45476) are also provided in Table 4 for comparison (rows labelled ''Final Rule Source Category'' and ''Final Rule Whole Facility'').

TABLE 4—COMPARISON OF TACONITE IRON ORE PROCESSING SOURCE CATEGORY BASELINE INHALATION RISK ASSESSMENT RESULTS FROM THE 7/28/20 FINAL RULE TO THE 2023 UPDATED RESULTS

Risk assessment	Maximum individual cancer risk (in 1 million) [3]		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Final Rule Source Category	3 (As, Ni, Be)	5 (As, Ni, Be)	38,000	43,000	0.001	0.001	0.2 (Mn)	0.2 (Mn)	HQREL = <1 (As)
Updated Source Category [4]	5 (As, Ni, Be)	6 (As, Ni, Be)	56,000	56,400	0.002	0.003	0.1 (Mn)	0.2 (Mn)	HQREL = 1 (As)
Final Rule Whole Facility	3 (As, Ni, Be)		40,000		0.001		0.2 (Mn)		

TABLE 4—COMPARISON OF TACONITE IRON ORE PROCESSING SOURCE CATEGORY BASELINE INHALATION RISK ASSESSMENT RESULTS FROM THE 7/28/20 FINAL RULE TO THE 2023 UPDATED RESULTS—Continued

Risk assessment	Maximum individual cancer risk (in 1 million) [3]		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [1]		Maximum screening acute noncancer HQ [2]
	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions	Based on allowable emissions	Based on actual emissions
Updated Whole Facility [4]	5 (As, Ni, Be) ...	.....	56,000	.....	0.002	.....	0.2 (Mn)	.....	

[1] The TOSHI is the sum of the chronic noncancer hazard quotients (HQs) for substances that affect the same target organ or organ system.
[2] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop HQ values.
[3] Five facilities contribute to the maximum individual risk (MIR)—Keetac, Hibbing, Minorca, UTAC, and Minntac.
[4] Includes updated emissions data received following proposal from the 2022 CAA section 114 information request and any testing data received after publication of the RTR final rule.

The results of the revised inhalation risk modeling, as shown in Table 4 of this preamble, indicate that the cancer risk estimates for the Taconite Iron Ore Processing source category increased slightly from the estimate in the RTR final rule. Specifically, the maximum individual cancer risk (MIR) based on actual emissions (lifetime) increased from 3-in-1 million to 5-in-1 million (driven by arsenic, beryllium and nickel from fugitive dust sources and indurating furnaces). The number of people with chronic cancer risks of greater than or equal to 1-in-1 million increased from 38,000 to 56,000. The total estimated annual cancer incidence (national) based on actual emission levels increased from 0.001 to 0.002 excess cancer cases per year. The maximum chronic noncancer target organ-specific hazard index (TOSHI) value based on actual emissions decreased from 0.2 to 0.1 (neurological; driven by manganese compounds from fugitive dust and ore crushing sources). The maximum screening acute noncancer HQ value (off-facility site) remained about 1 (driven by arsenic from fugitive dust and ore crushing sources).

Regarding multipathway risk, in the July 28, 2020, final Taconite Iron Ore Processing RTR rule (85 FR 45476), we concluded that there was ''no significant potential for multipathway health effects.'' This determination was based upon a site-specific multipathway assessment that found cancer risk based on the fisher scenario was 0.2-in-1 million (arsenic). In addition, the noncancer hazard quotients were less than 1 for mercury (0.02) and for cadmium (0.01). We performed a linear scaling of the multipathway risks using a conservatively high estimate of the revised emissions for arsenic (4.4 times increase in emissions), mercury (2.4 times increase in emissions) and cadmium (emissions decreased). Using these scaling factors, the adjusted multipathway risks for cancer increased to 0.9-in-1 million (arsenic), and the adjusted noncancer hazard quotient for mercury increased to 0.05 (arsenic was unchanged).

The results of the updated inhalation risk analysis and the updated multipathway risk assessment indicate that the risk for the Taconite Iron Ore Processing source category has increased slightly, but still remains well within the range of acceptability. Further, we have not identified any information that would change the ample margin of safety analysis finalized in the 2020 RTR final rule. Based on these results, we are not proposing any changes to our decisions regarding risk acceptability or ample margin of safety that were made under CAA section 112(f) in the July 28, 2020, Taconite Iron Ore Processing RTR final rule (85 FR 45476).

G. What other actions are we proposing?

On January 5, 2022, the EPA published in the **Federal Register** (87 FR 393) a final rule amending the list of HAP under the CAA to add 1-bromopropane (1–BP) in response to public petitions previously granted by the EPA. As each NESHAP is reviewed, we are evaluating whether the addition of 1–BP to the CAA section 112 HAP list impacts the source category. For the Taconite Iron Ore Processing source category, we conclude that the inclusion of 1–BP as a HAP will not impact the NESHAP because, based on available information, we expect that 1–BP is not emitted from this source category. As a result, no changes are being proposed to the rule based on the addition of 1–BP to the CAA section 112 HAP list. Nevertheless, we are requesting comments and data regarding any potential emissions of 1–BP from this source category.

Also, in addition to the proposed actions described above, we are proposing to update the electronic reporting requirements found in 40 CFR 63.9641(c) and 40 CFR 63.9641(f)(3) to reflect new procedures for reporting CBI. Specifically, we are proposing to include an email address that owners and operators may use to electronically submit compliance reports containing CBI to the OAQPS CBI Office.

H. What compliance dates are we proposing?

The amendments to the Taconite Iron Ore Processing NESHAP proposed in this rulemaking for adoption of mercury standards under CAA sections 112(d)(2) and (3) and adoption of HCl and HF standards under CAA section 112(d)(6) are subject to the compliance deadlines outlined in the CAA under section 112(i). For existing sources, CAA section 112(i)(3) requires compliance ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard'' subject to certain exemptions further detailed in the statute.[12] In determining what compliance period is as ''expeditious as practicable,'' we consider the amount of time needed to plan and construct projects and change operating procedures. The EPA projects that several existing sources would need to install new add-on controls to comply with the proposed mercury limits; we also expect that one or two facilities will need to install controls for acid gases. We expect that these sources will require substantial time to plan, design, construct, and begin operating the new add-on controls, and to conduct performance testing, and implement monitoring to comply with the revised provisions. Therefore, we are proposing to allow 3 years for existing sources constructed or reconstructed before May 15, 2023 to become compliant with the new emission standards for mercury, HCl and HF. These sources would have

[12] *Association of Battery Recyclers* v. *EPA*, 716 F.3d 667, 672 (D.C. Cir. 2013) (''Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112]'' (brackets in original)).

to continue to meet the current provisions of 40 CFR part 63, subpart RRRRR.

Pursuant to CAA section 112(i), we are proposing that all affected sources that commenced construction or reconstruction after May 15, 2023 would comply with the provisions by the effective date of the final rule or upon startup, whichever is later. The final action is not a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed standards and the time needed to make the adjustments for compliance with any of the proposed standards. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

As previously indicated, there are currently seven major sources subject to the Taconite Iron Ore Manufacturing NESHAP that are operating in the United States. One additional major source, Empire Mining, is subject and has a permit to operate, but has been indefinitely idled since 2016. The NESHAP for Taconite Iron Ore Processing applies to the owner or operator of a taconite iron ore processing plant that is (or is part of) a major source of HAP emissions. A taconite iron ore processing plant is any facility engaged in separating and concentrating iron ore from taconite ore to produce taconite pellets. Taconite iron ore processing includes the following processes: liberation of the iron ore by wet or dry crushing and grinding in gyratory crushers, cone crushers, rod mills, and ball mills; concentration of the iron ore by magnetic separation or flotation; pelletizing by wet tumbling with a balling drum or balling disc; induration using a straight grate or grate kiln indurating furnace; and finished pellet handling. A major source of HAP is a plant site that emits, or has the potential to emit, any single HAP at a rate of 9.07 megagrams (10 tons) or more, or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site.

B. What are the air quality impacts?

This action proposes first-time emissions standards for mercury and revised emissions standards for HCl and HF and would require some plants to install additional controls on their indurating furnaces. For HCl, HF and mercury, installation of controls will result in a combined reduction of total HAP of 751 tons of HAP per year (tpy). Specifically, we estimate that the installation of controls will reduce HCl and HF emissions by 713 tpy and 38 tpy, respectively, and will reduce mercury emissions by 497 pounds per year (0.25 tpy).

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. We find that the secondary impacts of this action are minimal. Refer to the memorandum *Development of Impacts for the Proposed Amendments to the NESHAP for Taconite Iron Ore Processing* for a detailed discussion of the analyses performed on emissions reductions and potential secondary impacts. This memorandum is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

C. What are the cost impacts?

This action proposes emission limits for new and existing sources in the Taconite Iron Ore Processing source category. Although this action contains requirements for new sources, we are not aware of any new sources being constructed now or planned in the next year, and, consequently, we did not estimate any cost impacts for new sources. We estimate the total capital and annualized costs of the proposed rule for existing sources in the Taconite Iron Ore Processing source category will be approximately $91 million and $54 million per year, respectively. The annual costs are based on operation and maintenance of added control systems. A memorandum titled *Development of Impacts for the Proposed Amendments to the NESHAP for Taconite Iron Ore Processing* includes details of our cost assessment, expected emission reductions and estimated secondary impacts. A copy of this memorandum is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

D. What are the economic impacts?

For the proposed rule, the EPA estimated the cost of installing additional APCD in order to comply with the proposed emission limits. This includes the capital costs of the initial installation, and subsequent maintenance and operation of the controls. To assess the potential economic impacts, the expected annual cost was compared to the total sales revenue for the ultimate owners of affected facilities. For this rulemaking, the expected annual cost is $8 million (on average) for each facility, with an estimated nationwide annual cost of $54 million per year. The seven affected facilities are owned by two parent companies (U.S. Steel and Cleveland-Cliffs, Inc.). Neither parent company qualifies as a small business, and the total costs associated with the proposed amendments are expected to be less than 1 percent of annual sales revenue per ultimate owner.

The EPA also modeled the impacts of the proposed amendments using two standard partial equilibrium economic models: one for taconite iron ore pellets and one for steel mill products. The EPA linked these two partial equilibrium models by specifying interactions between supply and demand in both markets and solving for changes in prices and quantity across both markets simultaneously. These models use baseline economic data from 2019 to project the impact of the proposed NESHAP amendments on the market for taconite iron ore pellets and steel mill products. The models allow the EPA to project facility- and market-level price and quantity changes for taconite iron ore pellets and market-level price and quantity changes for steel mill products, including changes in imports and exports in both markets. Under the proposed amendments, the models project a 0.26 percent fall in the quantity of domestically produced taconite iron ore pellets along with a 0.58 percent increase in their price. The models also project a 0.02 percent fall in the quantity of domestically produced steel mill products along with an 0.01 percent increase in their price.

Information on our economic impact estimates on the sources in the Taconite Iron Ore Processing source category is available in the document *Economic Impact Analysis for the Proposed National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing Amendments* (EIA), available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). The EIA also includes an analysis of less and more stringent alternative

regulatory options for mercury and acid gases.

E. What analysis of environmental justice did we conduct?

Consistent with the EPA's commitment to integrating environmental justice (EJ) in the Agency's actions, and following the directives set forth in multiple Executive orders, the Agency has evaluated the impacts of this action on communities with EJ concerns. Overall, we found that in the population living in close proximity of facilities, the following demographic groups were above the national average: White, Native American, and people living below the poverty level. For two facilities, the percentage of the population that is Native American was more than double the national average.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations (people of color), low-income populations, and indigenous peoples (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009; January 20, 2021). The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' [13] The EPA further defines fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

For the Taconite Iron Ore Processing source category, the EPA examined the potential for EJ concerns by conducting a proximity demographic analysis. The proximity demographic analysis is an assessment of individual demographic groups in the total population living within 10 kilometers (km) and 50 km of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups. Since the taconite iron ore processing facilities are very large, a radius of 10 km was used as the near facility distance for the proximity analysis. A distance closer than 10 km does not yield adequate population size for the results. The results of the proximity analysis are in the technical report *Analysis of Demographic Factors For Populations Living Near Taconite Iron Ore Processing Source Category Operations,* available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

The results in Table 5 show that for the population living within 10 km of the eight facilities, the following demographic groups were above the national average: White (93 percent versus 60 percent nationally), Native American (0.8 percent versus 0.7 percent nationally), and people living below the poverty level (15 percent versus 13 percent nationally). For two facilities, the percentage of the population living within 10 km that is Native American (1.9 percent and 2.3 percent) was more than double the national average (0.7 percent).

TABLE 5—TACONITE IRON ORE PROCESSING SOURCE CATEGORY PROXIMITY DEMOGRAPHIC RESULTS

Demographic group	Nationwide	Total population living within 10 km of taconite facilities
Total Population	328M	59,000.
Number of Facilities		8.
Race and Ethnicity by Percent [Number of people]		
White	60 percent [197M]	93 percent [54,900].
African American	12 percent [40M]	1 percent [600].
Native American	0.7 percent [2M]	0.8 percent [500].
Hispanic or Latino (includes white and nonwhite)	19 percent [62M]	0.9 percent [500].
Other and Multiracial	8 percent [27M]	4 percent [2,400].
Income by Percent [Number of People]		
Below Poverty Level	13 percent [44M]	15 percent [9,000].
Above Poverty Level	87 percent [284M]	85 percent [50,000].
Education by Percent [Number of People]		
Over 25 and without a High School Diploma	12 percent [40M]	6 percent [3,600].
Over 25 and with a High School Diploma	88 percent [288M]	94 percent [55,400].
Linguistically Isolated by Percent [Number of People]		
Linguistically Isolated	5 percent [18M]	0.4 percent [200].

Notes:

- Nationwide population and demographic percentages are based on Census' 2015–2019 ACS 5-year block group averages. Total population count within 10km is based on 2010 Decennial Census block population.
- To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino, regardless of race.
- The sum of individual populations with a demographic category may not add up to total due to rounding.

[13] *https://www.epa.gov/environmentaljustice.*

The proposed actions, if finalized, will ensure compliance via frequent compliance testing and monitoring of control device operating parameters, and reduce emissions via new standards for mercury and revised standards for HCl and HF and by requiring affected sources to meet all the emissions standards at all times (including periods of startup, shutdown, and malfunctions). Therefore, the EPA expects that there would be a positive, beneficial effect for all populations in proximity to affected sources, including in communities potentially overburdened by pollution, which are often minority, low-income and indigenous communities.

F. What analysis of children's environmental health did we conduct?

In the July 28, 2020, final Taconite Iron Ore Processing RTR rule (85 FR 45476), the EPA conducted a residual risk assessment and determined that risk from the Taconite Iron Ore Processing source category was acceptable, and the standards provided an ample margin of safety to protect public health (see Docket Item No. EPA–HQ–OAR–2017–0664–0163). For this rulemaking, we updated that risk analysis using new emissions data that the EPA received for some HAP emissions sources at the taconite facilities. We determined that these new HAP emissions estimates would not significantly change our previous estimates of the human health risk posed by the Taconite Iron Ore Processing source category (see section IV.F of this preamble). In addition, this action proposes first-time emissions standards for mercury and revised emissions standards for HCl and HF and would further reduce emissions. Specifically, we estimate that the installation of controls will reduce HCl and HF emissions by 713 tpy and 38 tpy, respectively, and will reduce mercury emissions by 497 pounds per year (0.25 tpy).

This action's health and risk assessments are protective of the most vulnerable populations, including children, due to how we determine exposure and through the health benchmarks that we use. Specifically, the risk assessments we perform assume a lifetime of exposure, in which populations are conservatively presumed to be exposed to airborne concentrations at their residence continuously, 24 hours per day for a 70-year lifetime, including childhood. With regards to children's potentially greater susceptibility to noncancer toxicants, the assessments rely on the EPA's (or comparable) hazard identification and dose-response values that have been developed to be protective for all subgroups of the general population, including children. For more information on the risk assessment methods, see the risk report for the July 28, 2020, final Taconite RTR rule (85 FR 45476), which is available in the docket (Docket ID No. EPA–HQ–OAR–2017–0664).

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we request comment on our proposal to set mercury emission limits at the MACT floor level. We also request comment on whether to allow sources to comply with the mercury MACT standards through the proposed emissions averaging compliance alternative and on the appropriate adjustment factor to apply under the emissions averaging compliance alternative. In addition, we request comment and data on the variation of mercury content in taconite ore and whether and to what extent this variation should be considered in the development of the MACT standards for mercury from indurating furnaces. We also solicit comment on the data submitted by AISI and U.S. Steel concerning variation of mercury content in taconite ore (see discussion in section IV.A. of this preamble). In addition, we request comment on whether we should allow use of EPA Method 30B for affected facilities to demonstrate compliance with the proposed MACT standards for mercury. Further, we request comment on our proposal to change the way we regulate HCl and HF emissions from the source category. Specifically, we request comment on our proposal to directly regulate HCl and HF emissions from the source category and the numerical emission limits proposed for HCl and HF.

VII. Submitting Data Corrections

The site-specific emissions data used in developing the proposed MACT standards for HCl, mercury, and HF, as emitted from the Taconite Iron Ore Processing source category, are provided in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes.

For information on how to submit comments, including the submittal of data corrections, refer to the instructions provided in the introduction of this preamble.

VIII. Statutory and Executive order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

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

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2050.10. You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

We are proposing changes to the reporting and recordkeeping requirements for the Taconite Iron Ore Processing NESHAP by incorporating the reporting and recordkeeping requirements associated with the new and existing source MACT standards for mercury and revising the emission standards for HCl and HF.

Respondents/affected entities: Owners or operators of taconite iron ore plants that are major sources, or that are located at, or are part of, major sources of HAP emissions.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRRRR).

Estimated number of respondents: On average over the next 3 years, approximately seven existing major sources will be subject to these standards. It is also estimated that no additional respondent will become subject to the emission standards over the 3-year period.

Frequency of response: The frequency of responses varies depending on the burden item.

Total estimated burden: The average annual burden to industry over the next 3 years from the proposed recordkeeping and reporting requirements is estimated to be 1,580 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for all facilities to comply with all the

requirements in the NESHAP is estimated to be $177,000 per year. The average annual recordkeeping and reporting cost for this rulemaking is estimated to be $25,000 per facility per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *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. OMB must receive comments no later than July 14, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The Agency confirmed through responses to a CAA section 114 information request that there are only seven taconite iron ore processing plants currently operating in the United States and that these plants are owned by two parent companies that do not meet the definition of small businesses, as defined by the U.S. Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This 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. None of the taconite iron ore processing plants are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials during the development of this action. On January 12, 2022, the EPA's Office of Air and Radiation held a Tribal consultation meeting with representatives from the Fond du Lac Band of Lake Superior Chippewa Reservation and the Leech Lake Band of Ojibwe Reservation to discuss the EPA's CAA section 114 information request, and the general plans for this proposed rulemaking and related issues. A summary of that consultation is provided in the document *Consultation with the Fond du Lac Band of Lake Superior Chippewa and the Leech Lake Band of Ojibwe regarding Notice of Proposed Rulemaking for the National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing Amendments on January 12, 2022,* which is available in the docket for this action. Furthermore, EPA staff attended several meetings hosted by the Minnesota Pollution Control Agency (MPCA), along with representatives from Tribal Nations, MPCA, the Michigan Attorney General's Office, the Minnesota Attorney General's Office, EarthJustice, and the Michigan Department of Environment, Great Lakes, and Energy, to discuss concerns related to HAP emissions from taconite iron ore processing facilities. In addition, the EPA received letters from representatives of the Leech Lake Band of Ojibwe and the Fond du Lac Band of Lake Superior Chippewa expressing concerns of these Tribal Nations due to HAP emissions from the taconite iron ore processing facilities. These letters, and responses from the EPA, are provided in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664).

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

Executive Order 13045 (62 FR 19885; April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. In this action the EPA proposes emission standards for one previously unregulated pollutant (mercury) and revised emissions standards for two currently regulated pollutants (HCl and HF). Therefore, the rulemaking proposes health benefits to children by reducing the level of HAP emissions emitted from taconite iron ore processing plants.

However, the EPA's *Policy on Children's Health* applies to this action. This action is subject to the EPA's Policy on Children's Health [14] because the proposed rule has considerations for human health. Information on how the policy was applied is available in section V.F ''What analysis of children's environmental health did we conduct'' of this preamble.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In this action, the EPA is proposing to set emission standards for one previously unregulated pollutant (mercury) and to revise emission standards for two currently regulated pollutants (HCl and HF). This does not impact energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the Taconite Iron Ore Processing NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also conducted a review of voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 17, 26A and 29. During the EPA's VCS

[14] *https://www.epa.gov/children/childrens-health-policy-and-plan.*

search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this proposed rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA referenced methods. The EPA may reconsider determinations of impracticality when additional information is available for any particular VCS.

No voluntary consensus standards were identified for EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 4, 5, 5D, 17 or 26A. Two voluntary consensus standards were identified as acceptable alternatives to EPA Methods 3B and 29.

The EPA proposes to allow use of the VCS ANSI/ASME PTC 19.10–1981 Part 10 (2010), ''Flue and Exhaust Gas Analyses'' as an acceptable alternative to EPA Method 3B for the manual procedures only and not the instrumental procedures. The ANSI/ASME PTC 19.10–1981 Part 10 method incorporates both manual and instrumental methodologies for the determination of oxygen content. The manual method segment of the oxygen determination is performed through the absorption of oxygen. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://www.ansi.org* and *https://www.asme.org.* The standard is available to everyone at a cost determined by ANSI/ASME ($96). The cost of obtaining this method is not a significant financial burden, making the methods reasonably available.

The EPA proposes to allow use of the VCS ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)'' as an acceptable alternative to EPA Method 29 (mercury portion only) as a method for measuring mercury concentrations ranging from approximately 0.5 to 100 micrograms per normal cubic meter (μg/Nm^3). This test method describes equipment and procedures for obtaining samples from effluent ducts and stacks, equipment and procedures for laboratory analysis, and procedures for calculating results. VCS ASTM D6784–16 allows for additional flexibility in the sampling and analytical procedures from the earlier version of the same standard VCS ASTM D6784–02 (Reapproved 2008). VCS ASTM D6784–16 allows for the use of either an EPA Method 17 sampling configuration with a fixed (single) point where the flue gas is not stratified, or an EPA Method 5 sampling configuration with a multi-point traverse. For this action, only the EPA Method 5 sampling configuration with a multi-point traverse can be used. This method is available at ASTM International, 1850 M Street NW, Suite 1030, Washington, DC 20036. See *https://www.astm.org/.* The standard is available to everyone at a cost determined by ASTM ($82). The cost of obtaining this method is not a significant financial burden, making the method reasonably available.

Additional detailed information on the VCS search and determination can be found in the memorandum, *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0664). The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable VCS and to explain why such standards should be used in this regulation.

The EPA is incorporating by reference the VCS ANSI/ASME PTC 19.10–1981 Part 10 (2010), ''*Flue and Exhaust Gas Analyses*'' as an acceptable alternative to EPA Method 3B for the determination of oxygen content (manual procedures only) and the VCS ASTM D6784–16, ''*Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),*'' as an acceptable alternative to EPA Method 29 (mercury portion only) as a method for measuring elemental, oxidized, particle-bound, and total mercury.

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.

The EPA anticipates 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 low-income populations and/or indigenous peoples. The assessment of populations in close proximity of taconite iron ore processing plants shows Native American and low-income populations are higher than the national average (see section V.F. of this preamble). The higher percentages are driven by two of the eight facilities in the source category. The EPA anticipates that this action is likely to reduce existing disproportionate and adverse effects on low-income populations and/or indigenous peoples. The EPA is proposing new MACT standards for mercury and revised standards for HCl and HF. The EPA expects that five facilities would have to implement control measures to reduce emissions to comply with the new and revised MACT standards and that HAP exposures for indigenous peoples and low-income individuals living near these five facilities would decrease. The information supporting this Executive order review is contained in section V.E of this preamble.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

[FR Doc. 2023–10068 Filed 5–12–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 230509–0128]

RIN 0648–BM17

Fisheries of the United States; Magnuson-Stevens Fishery Conservation and Management Act; National Standard 4, 8, and 9 Guidelines

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is publishing this ANPR to alert the public of potential future adjustments the agency may make to the implementing guidelines for National Standards 4, 8, or 9, of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Several ongoing fishing management challenges, including changes in environmental conditions, shifting distributions of fish stocks, and equity and environmental justice considerations that affect fishing communities that are currently or have been historically dependent on the resource, suggest a need to revisit the guidelines to ensure they remain appropriate for current U.S. fisheries management. The intent of this notice is to provide the public with background on some of the specific issues under consideration, seek specific input, and provide a general opportunity for comment. NMFS will take public comment into consideration when it decides whether or not to propose changes to the guidelines for National Standards 4, 8, or 9.

DATES: Comments must be received by 5 p.m., local time, on September 12, 2023.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–HQ–2023–0060'', by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter ''NOAA–HQ–2023–0060'' in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Wendy Morrison; National Marine Fisheries Service, NOAA; 1315 East-West Highway, Room 13436; Silver Spring, MD 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to another address or individual, or received after the end of the comment period, may not be considered. All comments received are 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Wendy Morrison, Fisheries Policy Analyst, National Marine Fisheries Service, 301–427–8564.

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of the MSA contains 10 national standards for fishery conservation and management. Any fishery management plan (FMP) prepared under the MSA, and any regulation adopted under the MSA to implement any such plan, must be consistent with these national standards.

- National Standard 4 (NS4) of the MSA states that conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.
- National Standard 8 (NS8) states that conservation and management measures shall, consistent with the conservation requirements of the MSA (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are consistent with the best scientific information available, in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.
- National Standard 9 (NS9) states that conservation and management measures shall, to the extent practicable, (a) minimize bycatch and (b) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

Section 301(b) of the MSA requires that the Secretary of Commerce establish advisory guidelines, based on the national standards, to assist in the development of FMPs. These guidelines do not have the force and effect of law; however, the courts often give deference to the agency's interpretations in the guidelines. Guidelines for National Standards 4, 8, and 9 are codified at 50 CFR 600.325 (NS4), 600.345 (NS8), and 600.350 (NS9). NMFS last revised the NS4 Guidelines on May 1, 1998 (63 FR 24212), NS8 Guidelines on November 17, 2008 (73 FR 67809), and NS9 Guidelines on November 17, 2008 (73 FR 67809).

Since these guidelines were last revised, a number of fishery management challenges, including changes in environmental conditions and shifting distributions of fish stocks, suggest a need to revisit the guidelines to ensure they remain appropriate for current U.S. fisheries management. Recent Executive Orders (E.O.s), such as E.O. 14008 on Tackling the Climate Crisis at Home and Abroad, and E.O. 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as well as relevant policy documents (*e.g.,* NOAA fiscal year 2022–2026 Strategic Plan) highlight NMFS' commitment to plan for climate change impacts and to serve stakeholders equitably by engaging underserved communities in the science, conservation, and management of the nation's fisheries, consistent with existing law. NMFS strongly supports the need to further improve adaptability of our management processes in the context of changing environmental conditions and ensure equity and environmental justice (that is, equity applied to environmental laws, policies, and practices) within the fishery management process. As such, NMFS is soliciting input on potential future revisions to the National Standards 4, 8, and 9 Guidelines that would address recent fishery management challenges, bolster climate adaptability, and encourage equity and environmental justice within the fishery management process under the existing provisions of the MSA.

Background on the National Standards

National Standard 4

Allocation of fishing privileges under NS4 guidelines refers to the direct and deliberate distribution of the opportunity to participate in a fishery among user groups or individuals. See 50 CFR 600.325(c)(1). Decisions regarding the allocation of fishery resources are often controversial and challenging. In general, increases to one group result in decreases to another, leading to allocation decisions being perceived as a ''win'' for some fishermen or fisheries and a ''loss'' for others. A 2012 report based on interviews with fishery stakeholders

regarding allocation found that the concepts of fairness and equity are complicated and often vary depending on individual circumstances (Lapointe 2012 at *https://media.fisheries.noaa.gov/dam-migration/lapointe-allocation-report.pdf*). This report concluded that many stakeholders will continue to view allocations as unbalanced or unfair unless the outcomes are close to the positions they seek.

In addition to the existing NS4 guidelines, NMFS created an Allocation Policy (available at *https://media.fisheries.noaa.gov/dam-migration/01-119.pdf*) in 2016 that requires the eight Regional Fishery Management Councils (Councils), and NMFS for Atlantic Highly Migratory Species (HMS), to identify a trigger for all fisheries that contain an allocation. The trigger could be based on time, public input, or an indicator. When a specified trigger is met, the Council or NMFS must assess if a revision to the allocation is needed. However, the Allocation Policy does not require Councils or NMFS to implement any changes to the allocation.

National Standard 8

National Standard 8 requires that an FMP take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of—and minimize adverse economic impacts on—such communities. However, both NMFS guidance and court precedent establish that minimizing adverse impacts on communities must be considered secondary to the conservation requirements of the MSA. In short, actions meant to address the importance of fishery resources to affected fishing communities must not compromise the achievement of conservation requirements and goals of the FMP. As the current NS8 guidelines clarify: ''All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.''

National Standard 9

Fishermen sometimes catch, and may discard, species they do not want, cannot sell, or are not allowed to keep, creating what we know as bycatch. Bycatch is a complex, global issue. The MSA defines bycatch as ''fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. This term does not include fish released alive under a recreational catch and release fishery management program.'' 16 U.S.C. 1802(2). It also does not include incidental catch, or non-target catch, that is sold or kept for personal use. The MSA definition of ''fish'' does not include marine mammals and birds, thus bycatch of these animals is not included under this standard. NS9 requires that bycatch and bycatch mortality (*e.g.,* unobserved mortality due to a direct encounter with fishing vessels and gear) shall be minimized to the extent practicable.

In considering potential revisions to the guidance for these three national standards, NMFS is seeking comment on the following issues, in particular (in no specific order).

Tackling the Climate Crisis

The changing climate and oceans have significant impacts on the nation's valuable marine life and ecosystems, and the many communities and economies that depend on them. Scientists expect environmental changes such as warming oceans, rising sea levels, frequency and intensity of floods and droughts, and ocean acidification to increase with continued shifts in the planet's climate system. Changing ocean conditions are affecting the location and productivity of fish stocks and the fishing industry's interactions with bycatch, protected species, and other ocean users. Some fish stocks are becoming less productive and/or are moving out of range of the fishermen who catch them. These shifts can cause social, economic, and other impacts on fisheries and fishing-dependent communities. As a result, fishing industries and coastal businesses can face significant challenges in preparing for and adapting to these changing conditions. NMFS understands the importance of updating fisheries management to address current and anticipated needs and conditions, including dynamic stock conditions and changing ocean conditions. The issues associated with changing climate conditions that NMFS is requesting comment on in relation to National Standards 4, 8, and 9 are outlined below.

1. *National Standard 4:*
Environmental changes are affecting, and will continue to affect, stock distributions and abundances, and have the potential to change the applicability of historical information and current regulations. Most allocations established by the Councils and NMFS are highly complex and supported by extensive analyses. Determinations of many, but not all, of the existing allocations have relied heavily on documented catch or landings during specific time periods. Considering documented catch in the development of allocations is important to help participants maintain access to resources they have been dependent upon, and to document compliance with statutory requirements. However, it is also important to consider the needs of other users, such as new fishermen who would like to enter a fishery, fishermen displaced from other fisheries, and/or existing fishermen who are catching new species in their historical fishing grounds.

NMFS is considering whether updates to the NS4 guidelines would help encourage allocation decisions that balance the needs of different user groups when creating and updating allocations, including for stocks that are shifting, or have shifted, their distribution. NMFS welcomes specific input on:

(a) Approaches, consistent with other statutory requirements, for balancing consideration of anticipated or realized changes in stock distributions and/or overall fishery access for historical users, marginalized individuals who may have been inequitably excluded from historical allocations, and new users in such allocation decisions;

(b) Whether revisions to the NS4 guidelines are needed to reinforce NMFS' Allocation Policy's requirement to complete periodic reviews of allocations; and

(c) The types of documentation, analyses, and alternative approaches (*e.g.,* spatial allocations between sectors or gears, mixes of historic use and dynamic allocation schemes) that should be considered when making such allocation decisions.

2. *National Standard 8:*
Environmental changes are affecting, and will continue to affect, stock distributions and abundances, creating challenges for communities dependent on those resources. NMFS is requesting comments on options for updating the guidelines to NS8 to better account for these changes and to improve the ability of communities to adapt to these changing conditions.

3. *National Standard 9:*
Environmental changes are affecting, and will continue to affect, the distributions of many marine resources, including target fish stocks, bycatch fish stocks and protected resources. This has and will continue to create challenges to maintaining economic viability of fisheries while also ensuring sustainable management of all marine resources. NMFS is requesting comments on options for updating the guidelines to

NS9 to better account for and adapt to these changes.

Equity and Environmental Justice

NMFS is committed to advancing equity and environmental justice, including equal treatment, opportunities, and environmental benefits for all people and communities, while building on continuing efforts and partnerships with underserved and underrepresented communities. For purposes of this document, consistent with E.O. 13985, ''underserved communities'' refers to ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civil life.'' The issues associated with equity and environmental justice that NMFS is requesting comment on are outlined below.

1. *National Standard 4:* The existing NS4 guidelines provide limited guidance on what is meant by ''fair'' and ''equitable'', in order to allow Councils and NMFS the flexibility to interpret these terms as needed within their circumstances given the variability in fisheries across the country. NMFS asserts it would be difficult to provide additional guidance on these terms that will be appropriate across the variety of social, economic, and ecological conditions of the eight Councils and Atlantic HMS.

NMFS requests specific input on:

(a) Approaches to improve consideration of underserved communities, previously excluded entrants, and new entrants in allocation decisions; and

(b) The types of documentation and analyses that should be considered to ensure such allocation decisions are fair and equitable. Commenters on this issue should bear in mind the requirements of MSA sections 303(b)(6) and 303A(c)(3)(B), (c)(4)(C), and (c)(5) that require consideration of current and past participation as well as other considerations when developing limited entry programs, Limited Access Privilege Programs (LAPPs), and initial allocations for LAPPs.

2. *National Standard 8:* NMFS is committed to serving stakeholders equitably by engaging underserved communities in the science, conservation, and management of the nation's fisheries. NMFS does not believe that the existing NS8 guidelines limit NMFS' or the Councils' ability to implement regulations and policies that address inequities or barriers to access for underserved communities. However, NMFS is considering removing language in the NS8 guidelines that states that NS8 ''does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community.'' This text may be unnecessary and confusing, given that NS8 does not specifically authorize, or prohibit, allocations to fishing communities. NMFS recognizes that allocations to a specific fishing community may be beneficial in some situations, if supported with appropriate rationale, and if NS8 is not the sole basis for making such allocations.

NMFS is also considering revising the definition of fishing community within the guidelines. The MSA defines a fishing community as ''a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such communities.'' 16 U.S.C. 1802(17). The current NS8 guidelines add to the statutory definition by stating a fishing community is ''a social or economic group whose members reside in a specific location and share a common dependency on commercial, recreational, or subsistence fishing or on directly related fisheries-dependent services and industries (for example, boatyards, ice suppliers, tackle shops).'' 50 CFR 600.345(b)(3). Given the wide range of fishing community structures (including locations of fishing infrastructure and fishing-related economic activity) associated across the U.S. and its territories, NMFS is considering removing or revisiting the requirement for members to reside in a specific location. In addition, NMFS is also considering adjusting how the ''fishing community'' definition under the NS8 guidelines balances between dependency and engagement. As stocks decrease in abundance or shift distributions, communities will likely need to adapt. One option could be for a community to increase their resilience by decreasing their dependence on one or more particular stocks or fisheries (*i.e.,* diversifying the fisheries that can be accessed). Thus, NMFS is considering revising the definition to shift from focusing on ''dependence'' to focusing on ''engagement,'' as both are included within the MSA definition. Shifting the focus of the definition of ''fishing community'' towards ''engagement'' could help provide that those communities that undertake engagement efforts that build up the community's economic resilience, while still being engaged with fisheries, could continue to be considered a ''fishing community'' under the NS8 guidelines. NMFS requests input on the definition of ''fishing community'' within the NS8 guidelines, including the use of ''current and historical engagement'' instead of or in addition to ''dependence''.

Finally, NMFS welcomes suggestions on how to appropriately balance the requirement under NS8 for ''sustained participation'' of fishing communities and the need to improve consideration of (1) underserved communities currently or historically engaged with fisheries, (2) previously excluded entrants, (3) new entrants, and (4) communities with high levels of social or climate vulnerability. NMFS also welcomes input on appropriate measures of social and climate vulnerability for fishing communities.

3. *National Standard 9:* Conflict between fisheries and gears is common in fisheries management, via overlap in geographic areas fished or species caught. Relevant to NS9 is the situation where bycatch in one fishery has negative impacts on another fishery, usually via a restricting limit on total fishing mortality for a shared stock. For example, bycatch of one species in a fishery may reduce the amount of that species available to harvest in a target commercial fishery, recreational fishery, or subsistence fishery. The issue can be further complicated when one or more fisheries in conflict are important for underserved communities. NMFS welcomes input on how the NS9 guidelines could be modified to minimize bycatch mortality in a manner that is equitable across different fisheries and gear types. NMFS also welcomes comments on ways to better balance the needs of bycatch and target fisheries in a manner that is equitable across different fisheries and gear types, especially when one or more fisheries are important for underserved communities.

Other Relevant Management Challenges

There are other fisheries and management issues relevant to National Standards 4, 8 and 9 that are not covered above. NMFS is requesting comment on two of these issues in particular, as described below.

1. *Practicability Standard:* NS9 requires bycatch and bycatch mortality be minimized ''to the extent practicable''. NMFS asserts the discussion of practicability within the existing NS9 guidelines appropriately balances the various complexities of federal fisheries management. NMFS welcomes input on how the NS9 guidelines could be modified to further

decrease bycatch or bycatch mortality of stocks. NMFS also welcomes input on other ways to improve the guidelines. For example, NMFS welcomes input on whether the agency should consider: (1) adding provisions to address bycatch on an ecosystem level (as opposed to single species metrics), (2) implementing provisions for alternative performance-based standards, or (3) increasing provisions to document bycatch avoidance.

2. *Reducing Waste:* Some FMPs include management measures that prohibit retention of certain fish species or sizes to ensure fishermen are dis-incentivized from incidentally catching these fish. When these regulatory discards are required, they can lead to significant waste as fishermen are forced to discard (waste) usable catch. NMFS seeks input on revisions to the NS9 guidelines that could encourage provisions to incentivize reduction of waste, including use of innovations that decrease bycatch (*e.g.,* gear innovations or adjustable area closures that avoid certain species or sizes of fish), decrease bycatch mortality (*e.g.,* gear innovations that improve the health and survival of discards), or increase use while dis-incentivizing catch of overfished or low productivity stocks (*e.g.,* allowing a fishery to retain and sell what would otherwise be required to be discarded either through purchasing quota share or other types of compensation; or allowing bycatch to be donated to food shelters so that it is not wasted but also does not lead to economic gains).

NMFS also acknowledges that other relevant management issues have arisen in litigation over the past years in addition to those discussed above. The agency will consider these issues when deciding whether to propose revisions to the NS4, 8, or 9 guidelines, but is not soliciting comment on them here.

Public Comment

NMFS is soliciting comments on the issues and concepts outlined in this ANPR. NMFS invites comments to help determine the scope of issues to potentially be addressed in a subsequent revision to the National Standard guidelines for NS 4, 8, or 9 and to identify significant issues related to these national standards. NMFS is also seeking additional ideas to ensure that the National Standard 4, 8, and 9 guidelines remain relevant given current and emerging issues facing U.S. fisheries management. All written comments received by the due date will be considered in evaluating whether revisions to the guidelines or related policy documents are warranted. Additionally, NMFS has requested to present this ANPR to the various Regional Fishery Management Councils and the Atlantic HMS Advisory Panel during the public comment period. Please see the appropriate meeting notices on the Councils' and Atlantic HMS Advisory Panel's website for specific date and times. General meeting information is available below.

Atlantic HMS Advisory Panel May 9–11, 2023, *https://www.fisheries.noaa.gov/event/may-2023-hms-advisory-panel-meeting.*

Caribbean Fishery Management Council August 15–16, 2023, *https://www.caribbeanfmc.com/meeting-documents/2-uncategorised/426-august-15-16-2023.*

Gulf of Mexico Fishery Management Council June 5–8, 2023, *https://gulfcouncil.org/meetings/council/.*

Mid-Atlantic Fishery Management Council June 6–8, 2023, *https://www.mafmc.org/council-events/2023/june-council-meeting.*

New England Fishery Management Council June 27–29, *https://www.nefmc.org/calendar/june-2023-council-meeting.*

North Pacific Fishery Management Council June 8–11, 2023, *https://meetings.npfmc.org/Meeting/Details/2993.*

Pacific Fishery Management Council June 20–27, 2023,*https://www.pcouncil.org/council_meeting/june-2023-council-meeting/.*

South Atlantic Fishery Management Council June 12–16, *https://safmc.net/events/june-2023-council-meeting/.*

Western Pacific Fishery Management Council June 26–30, 2023, *https://www.wpcouncil.org/public-meetings/.*

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

Dated: May 9, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–10294 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230508–0125]

RIN 0648–BL45

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 23 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council has submitted the Black Sea Bass Commercial State Allocation Amendment (Amendment 23) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Amendment 23 proposes to establish commercial state-by-state black sea bass allocations in the Federal fishery management plan and regulations, to change the trigger for the in-season closure accountability measures, and change the state-overage payback. Amendment 23 is intended to address the allocation-related impacts of the significant changes in the distribution of black sea bass that have occurred since the original allocations were implemented.

DATES: Comments must be received by June 14, 2023.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0041, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0041 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 personally 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).

Copies of Amendment 23, including the Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Analysis (EA/RIR/RFA) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: *https://www.mafmc.org/actions/bsb-commercial-allocation.*

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116, *emily.keiley@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the black sea bass fishery. Amendment 23 considers changes to the management of the commercial black sea bass fishery. Specifically, this amendment proposes to establish the commercial black sea bass state-by-state allocations in the Federal FMP and regulations, while also making changes to those state allocations (previously managed only under the Atlantic States Marine Fisheries Commission's FMP), proposes a change to the Federal in-season closure regulations for the commercial black sea bass fishery, and proposes a change to the provisions that apply when a quota overage occurs to incorporate the potential for a state-level overage. The intended purpose of the proposed state allocation changes is to provide fair and equitable access to the commercial black sea bass fishery among states in the management unit, taking into consideration the historical dependence of the states on the fishery, as well as changes in abundance and stock distribution over time. The purpose of the change to the in-season closure trigger is to continue to prevent commercial annual catch limit (ACL) overages while minimizing potential negative socioeconomic impacts of Federal in-season closures on states that have not fully harvested their allocations.

The Council and Commission's Black Sea Bass Board initially approved their respective amendment and addendum during a joint meeting on February 1, 2021. However, in response to a remand from the Commission's Policy Board, the two management bodies revisited their previous recommendations and voted to revise the commercial state quota allocations. This action considers the proposed changes to the Federal FMP. The Commission's Addendum XXXIII measures are final and, while the state allocations are not currently in the Federal FMP, they became effective and were implemented by the Commission and the states on January 1, 2022. The proposed regulations for this proposed rule were deemed by the Mid-Atlantic Council to be consistent with its intent for Amendment 23; however, under section 304(a)(3) of the (Magnuson-Stevens Fishery Conservation and Management Act) Magnuson-Stevens Act, the Secretary of Commerce may disapprove, or partially approve an amendment submitted by the Council if it is determined to be inconsistent with a provision of the Magnuson-Stevens Act or other applicable law. The regulations proposed herein would be necessary if the Secretary approves Amendment 23 in full. If Amendment 23 is disapproved, in whole or in part, the relevant proposed regulations would no longer be necessary. For a full description of the agency's considerations for approving, disapproving, or partially approving Amendment 23, and to provide comment on that decision, please refer to the Notice of Availability published in the **Federal Register** on May 4, 2023 (88 FR 28456).

Proposed Measures

Council Management of State Allocations

This amendment considers whether the state allocations should remain only in the Commission's Interstate FMP, or if they should be included in both the Council's and the Commission's FMPs. The stated purposes are: to provide fair and equitable access to the commercial black sea bass fishery among states in the management unit, taking into consideration the historical dependence of the states on the fishery, as well as changes in abundance and stock distribution over time; to allow the Council and Commission to determine which management measures are most appropriate for joint management in both FMPs; and to help prevent commercial ACL overages while minimizing potential negative socioeconomic impacts of Federal in-season closures on states that have not fully harvested their allocations. Under the Council and Board's preferred alternative, the state allocations would be added to the Federal FMP. If approved, this change would mean that future changes to the allocations must be considered through a joint action of the Council and Commission. This change would also shift an administrative burden and the cost of monitoring state quotas and processing state quota transfers to the Regional Office, similar to what is done for Atlantic bluefish and summer flounder. We are specifically considering disapproving the addition of the state allocations to the Federal FMP. A summary of our rationale is provided in the Notice of Availability for this action published in the **Federal Register** on May 4, 2023 (88 FR 28456).

Overages and State Payback Requirements

Under the Commission FMP, overages of state-specific quotas are only required to be paid back by a state when the coastwide quota has been exceeded. If the state allocations are included in the Federal FMP, the Council and Board's preferred alternative is to maintain this payback provision, and add it to the Federal FMP.

In years when the annual landings do not exceed the coastwide quota, no state-level or coastwide paybacks would be required. If the annual coastwide quota is exceeded, states with quota overages will be required to pay back those overages in the following year. All black sea bass landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the black sea bass were harvested. Any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year.

Commercial State Allocation Scheme

This joint action considered changes to the distribution of commercial black sea bass quota among the states. Because the state commercial allocations are not currently a part of the Federal FMP, the Commission considered and implemented a new allocation formula in its FMP. The Council is recommending we adopt the same allocation scheme in the Federal FMP.

This new allocation does not specify fixed-allocation percentages, but defines a process for calculating allocations that is partially based on biomass distribution. The allocations would be modified through the specifications process each time new biomass distribution information is available. Specifically, the state allocation percentages will be calculated using the following steps:

(1) Connecticut's baseline allocation was increased from 1 to 3 percent, and New York's baseline allocation was increased from 7 to 8 percent;

(2) Seventy-five percent of the coastwide quota is then allocated according to the new baseline allocations (*i.e.,* the original allocations implemented by Amendment 13 to the Interstate FMP in 2003 as modified to account for the initial increases to Connecticut and New York);

(3) Twenty-five percent of the quota is allocated to three regions based on the most recent regional biomass distribution information. The three regions are: Maine-New York, New Jersey, and Delaware-North Carolina; and,

(4) The regional allocations are distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire would each receive 1 percent of the northern region quota.

While we are considering disapproving the inclusion of these revised allocations in the Federal FMP due to the unnecessary increase in administrative burden and inefficiencies, and the lack of northern states as members of the Council as described above, we are supportive of the revised approach that was developed by the Council and Commission as it includes consideration of the distribution of the black sea bass stock, and the ability to revise allocations as the stock shifts. As noted, the Commission has already implemented this process for the development of the 2023 commercial quotas.

Federal Commercial In-Season Closure Trigger

Currently, the Federal FMP requires a commercial coastwide in-season closure for all federally permitted vessels and dealers, regardless of state, once the coastwide quota is projected to be landed. This amendment considers changing this trigger, so that the closure would occur once landings are projected to exceed the coastwide quota plus an additional buffer of up to 5 percent. The Council and Board would agree to the appropriate buffer for the upcoming year through the specifications process. The Council's Monitoring Committee and the Commission's Technical Committee would provide advice on the appropriate buffer based on considerations such as stock status, the quota level, and recent fishery trends.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures (see **ADDRESSES**).

Entities affected by this action include fishing operations with federal moratorium (commercial) black sea bass permits. Fishermen who are only permitted to operate in state waters are not considered ''entities'' under the Regulatory Flexibility Act (RFA) and thus economic impacts on these fishermen are not discussed here.

Vessel ownership data [1] were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be regulated by this action. A total of 421 affiliates were identified as being potentially impacted by this action because they have a federal black sea bass moratorium permit.

For Regulatory Flexibility Act purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is fishing (50 CFR 200.2). A business primarily engaged in fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Of the 421 potentially impacted affiliates, 412 (98 percent) were classified as small businesses and 9 (2 percent) were classified as large businesses based on their average revenues during 2019–2021.

The expected impacts of the proposed action were analyzed by employing quantitative approaches to the extent possible. Effects on profitability associated with the preferred alternatives should be evaluated by looking at the impact of the measures on individual business entities' costs and revenues. However, in the absence of cost data for the commercial black sea bass fishery, changes in gross revenues were used as a proxy for profitability. Where quantitative data were not available, qualitative considerations are included.

The nine potentially impacted large businesses had average total annual revenues of around $8.35 million during 2019–2021. On average, black sea bass accounted for 0.65 percent of total revenues, or $54,290, for these nine large businesses. The 412 potentially impacted small businesses had average total annual revenues of $684,390 during 2019–2021. On average, black sea bass accounted for 2 percent (or $16,572) of the total revenues for each of these small businesses during 2019–2021.

This action considers changes to the process used to allocate state commercial black sea bass quota, as well as a change to the trigger for commercial coastwide closures. The other alternatives in this proposed rule are administrative in nature (adding the allocations and payback provisions into the Federal FMP) and thus will not have economic impacts on small entities. The revised allocation process will primarily impact the distribution of landings by state; it will have a minimal impact on total landings and total revenues. The proposed trigger for commercial coastwide closures adds a buffer of up to 5 percent to the quota level that would require a coastwide closure. This would have a positive impact on small entities, as it was designed to allow more states and their respective fishermen, to fully utilize their quota.

[1] Affiliate data for 2019–2021 were provided by the NMFS Northeast Fisheries Science Center's Social Science Branch.

This rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 8, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Amend § 648.142 as follows:
■ a. Revise paragraphs (a) introductory text and (a)(2);
■ b. Add paragraph (a)(15);
■ c. Revise paragraph (c); and
■ d. Add paragraph (f).

§ 648.142 Black sea bass specifications.

(a) *Specifications.* Commercial quota, recreational landing limit, research set-aside, and other specification measures. The Monitoring Committee will recommend to the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other measures, as needed, that are projected to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The following measures are to be considered by the Monitoring Committee:

* * * * *

(2) An annual coastwide commercial quota and corresponding state allocations.

* * * * *

(15) A commercial quota overage buffer, of up to 5 percent, that would be used to determine when a Federal in-season closure would be triggered.

* * * * *

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated to the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. Seventy-five percent of the coastwide quota will be allocated according to the following baseline percentage allocations: Maine (0.25) New Hampshire (0.25); Massachusetts (12.62); Rhode Island (10.68); Connecticut (3.00); New York (8.00); New Jersey (19.42); Delaware (5.00); Maryland (10.68); Virginia (19.42); and North Carolina (10.68). Based on the methodology described in the FMP, 25 percent of the quota will be allocated to three regions based on the most recent regional biomass distribution information. The three regions are: Maine-New York, New Jersey, and Delaware-North Carolina. The regional allocations will be distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire which each receive 1 percent of the northern region quota.

* * * * *

(f) *Commercial state quota transfers.* Any state implementing a state commercial quota for black sea bass may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Transfer requests must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the Regional Administrator shall consider whether:

(i) The transfer would preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and Magnuson-Stevens Act.

(2) The transfer of quota will be valid only for the calendar year for which the request was made.

(3) A state may not submit a request to transfer quota if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of the approval of the transfer has been published in the **Federal Register**.

■ 3. In § 648.143, revise paragraphs (a) introductory text and (a)(2) to read as follows:

§ 648.143 Black sea bass accountability measures.

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine shall be applied against the quota in the state in which it is landed, and the commercial annual coastwide quota, regardless of where the black sea bass were harvested. The Regional Administrator will determine the date on which the annual coastwide quota, plus a buffer up to 5 percent as specified in the annual specifications, is projected to be harvested; and beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3′ N lat. will be closed to the possession of black sea bass. The Regional Administrator will publish a notification in the **Federal Register** advising that, upon and after that date, no vessel may possess black sea bass in the EEZ north of 35°15.3′ N lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to commercial landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

* * * * *

(2) *Commercial landings overage repayment.* If the annual coastwide quota is exceeded, any landings in excess of the commercial quota in any state, inclusive of any state-to-state transfers, will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. All black sea bass landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the black sea bass were harvested. The overage deduction will be based on landings for the current year through October 31 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the

fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish a notification in the **Federal Register** announcing such restoration.

* * * * *

[FR Doc. 2023–10112 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 88, No. 93
Monday, May 15, 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by June 14, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Movement of Organisms Modified or Produced Through Genetic Engineering.

OMB Control Number: 0579–0085.

Summary of Collection: Under the Plant Protection Act (PPA, 7 U.S.C. 7703 *et seq.*) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States. The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction of plant pest into the United States or their dissemination within the United States. The statutory requirements for the information collection activity are found in the PPA. The regulations in 7 CFR part 340 implement the provisions of the PPA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction. APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS will collect the information through a permit procedure to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present a risk of plant pest introduction. The information collected through the permit procedure is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment if grown in the absence of regulations by APHIS. APHIS will also collect information through activities including marking and labeling, and processing appeals, reviews, and confirmation letters and exemption requests. The information is also provided to State departments of agriculture for review and made available to the public and private sectors to ensure that all sectors are kept informed concerning any potential risks posed using genetic engineering technology.

Description of Respondents: Business or other for profit; not-for-profit institutions; State, local or Tribal government.

Number of Respondents: 431.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 44,082.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–10231 Filed 5–12–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for a Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments on a proposed revision to the currently approved information collection in support of the Export Sales Reporting program. Specifically, FAS requests public comments regarding whether the collection of the proposed contract by contract information, rather than aggregated sales information, will help improve the timeliness and reliability of the data in USDA's Export Sales Reports; the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption used; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on those who are to report, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments should be submitted no later than July 14, 2023 to be assured of consideration.

ADDRESSES: You may send comments, identified by the OMB Control number 0551–0007, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

• *Email: esr@fas.usda.gov*. Include OMB Control number 0551–0007 in the subject line of the message.

• *Mail, Courier, or Hand Delivery:* Amy Harding, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 5531, Washington, DC 20250.

Instructions: All submissions received must include the agency names and OMB Control Number for this notice.

FOR FURTHER INFORMATION CONTACT: Amy Harding, 202–720–3538, *Amy.Harding@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Export Sales Reporting Program of U. S. Agricultural Commodities.

OMB Number: 0551–0007.

Expiration Date of Approval: October 31, 2023.

Type of Request: Revision of a currently approved information collection.

Abstract: Section 602 of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5712) requires the reporting of information pertaining to contracts for export sale of certain specified agricultural commodities that may be designated by the Secretary of Agriculture. In accordance with Section 602, individual reports submitted shall remain confidential and shall be compiled and published in compilation form each week following the week of reporting. Regulations at 7 CFR part 20 provide the reporting requirements and prescribe a system for reporting information pertaining to contracts for export sales.

USDA's electronic reporting system for the collection of information on export sales, also known as the Export Sales Reporting and Maintenance System (ESRMS), was created after the large, unexpected purchase of U.S. wheat and corn by the Soviet Union in 1972. To ensure that all parties involved in the production and export of U.S. grain have access to up-to-date export information, the U.S. Congress mandated an export sales reporting requirement in 1973. Prior to the establishment of the ESRMS, it was difficult for the public to obtain information on export sales activity until the actual shipments had taken place. This frequently resulted in considerable delay in the availability of market information.

Under the ESRMS, U.S. exporters may be required to report daily to the Foreign Agricultural Service information with respect to sales of agricultural commodities as requested. Such daily reports are to be made no later than 3:00 p.m. (Eastern Time) on the next business day after the sale is made. Currently, large sales of certain designated grains, oilseeds and oilseed products are required to be reported daily. The designated commodities for these daily reports are wheat (by class), barley, corn, grain sorghum, oats, soybeans, soybean cake and meal, and soybean oil. Large sales for all above designated commodities except soybean oil are defined as 100,000 metric tons or more of one commodity sold in one day to a single destination or 200,000 tons or more of one commodity sold to one destination during the weekly reporting period. Large sales for soybean oil are 20,000 metric tons or more sold in one day to one destination or 40,000 metric tons or more sold to one destination during any reporting week.

Weekly reports are also required, regardless of the size of the sales transaction, for all these commodities, as well as wheat products, rye, flaxseed, linseed oil, sunflower seed oil, cotton (by staple length), cottonseed, cottonseed cake and meal, cottonseed oil, rice (by class), cattle hides and skins (including cattle, calf, and kip), cattle wet blues, beef, and pork. The reporting week for the ESRMS is Friday-Thursday. The Secretary of Agriculture has the authority to add other commodities to this list.

U.S. exporters currently provide information on the quantity of their sales transactions, the type and class of commodity, the marketing year of shipment, the destination, and shipment information to include vessel name, quantity shipped, and bill of lading date for bulk shipments of wheat, corn, soybeans, barley and sorghum, among other things. They also report any changes in previously reported information, such as cancellations and changes in destinations.

The ESRMS currently requires exporters to manually upload the required data for Export Sales using form FAS 98. In addition, exporters are required to submit form FAS 97 to report Optional Origin Sales and related transactions and form FAS 100 to report Exports Made for Exporters Own Account and related transactions. Reports of contract terms shall be filed when requested, typically quarterly and annually, on form FAS–99, ''Contract Terms Supporting Export Sales and Foreign Purchases,'' and shall include the following:

(1) Reporting exporter's contract number.

(2) Date of export sale or purchase.

(3) Name of foreign buyer or foreign seller.

(4) Delivery period specified in the export sale or purchase.

(5) Delivery terms specified in the export sale or purchase (F.O.B., C. & F., etc.).

(6) Actual quantity of the export sale or purchase.

(7) Quantity not exported against the sale or foreign purchase (do not include any tolerance).

(8) Country of destination.

(9) On purchases from foreign sellers, show separately from export sales all items of this paragraph.

ESRMS is being upgraded for the first time in over a decade. A business process re-engineering approach was used to analyze and re-design the functionalities and workflows of ESRMS and the Export Sales Reporting (ESR) Query System from the ground up. Processes are being re-structured to improve data quality and operational efficiency. The re-design provides a single automated and consolidated system for all, exporters, users, and USDA staff, to meet mission critical objectives unlike the current systems which are separated into two applications, one for exporters and USDA staff, and another for external users.

The new ESRMS proposes to collect contract-specific sales and export data. The additional data reported will improve USDA's ability to monitor and enforce compliance with reporting requirements and improve the overall quality, reliability, timeliness, and trustworthiness of the data. Contract-specific data will help USDA reconcile export sales reporting with other USDA reports and Customs' export data. Additionally, the contract data will improve USDA's ability to validate the accuracy of reported sales and help identify errant or missing sales and export data.

Although requiring contract-specific reports will increase the number of entries that each exporter submits, the new ESRMS will include an electronic data transfer option allowing exporters a bulk electronic upload option for their export sales contract information via pre-designed CSV or JSON files. The upload of export sales contract information, rather than aggregate sales, provides the basic information needed to track export sales from inception to export. The new ESRMS is open for user testing for those registered exporters who want to experience the usability of the new system at *https://esrms.fas.usda.gov/*. This bulk electronic data transfer of export sales contract data will replace form FAS–99 Rev. 11–01,

Contract Terms Supporting Export Sales and Foreign Purchases, thus creating a time savings later in the year. The new form to be used for weekly Export Sales, Optional Origin Sales, and Export for Exporters Own Account Sales is titled ''FAS–ESR Contract Data Upload form.'' A copy of the form is provided with this package.

In addition to the data currently required to be submitted, FAS proposes to require data on the following for all commodities reported:

(1) Contract terms (FAS, FOB C&F, etc.) including volumes, destinations, buyers, and dates,

(2) Mode of transportation (*e.g.,* ship, rail, truck, & container),

(3) Mode of transportation identifier (*e.g.,* vessel name, rail name, trucking company name), and

(4) Bill of Lading date.

While an initial increase in exporter administrative activity associated with the addition of specific contract information via the ''FAS–ESR Contract Data Upload form'' is anticipated, the reporting burden is expected to decline as export companies complete any necessary modifications to their systems to allow their export sales data to be transferred to the new ESRMS via the bulk upload option using CSV or JSON files.

In the case of daily exports above the specified volumes, nothing will change. Exporters will continue to report daily sales using the existing procedures by sending a WORD document to the Export Sales staff as is currently required.

Along with the FAS–ESR Contract Data Upload form, new electronic data transfer forms for contract adjustments, exports, and shipment information have been developed to ultimately decrease the exporters' burden hours involved with entry of records into the new ESRMS. These electronic data entry forms have been designed to reflect reporting transaction types for export sales activities, optional origin activities, and exports for exporters own account activities and replace the need for forms FAS–97 Rev. 11–01, FAS–98 Rev. 11–01, and FAS–100 Rev. 11–01. The proposed new forms include the following:

- FAS–ESR New Contracts (Items 20, 110, 210)
- FAS–ESR Contract Adjustments (Items 20, 40, 50, 110, 150, 240)
- FAS–ESR Weekly Exports (Items 60, 230)
- FAS–ESR Optional Origin Sales (Item 140)

Copies of the forms are provided with this package.

FAS held six open demonstrations of the upgraded ESRMS throughout January, February, and March 2023, for exporters. The electronic data transfer processes were presented and explained thoroughly. Additional demonstrations, virtual training, and user acceptance testing will be held throughout the second and third quarters of fiscal year 2023. Participation in training and testing will assist responders to adequately estimate the burden of reporting the requested information.

The estimated total annual burden may temporarily increase while exporters are familiarizing themselves with the upgrades to ESRMS but then is expected to decline as they take advantage of automated uploading of information.

Estimate of Burden: The average burden, including the time for reviewing instructions, gathering data needed, completing forms, and record keeping is estimated to average 30 minutes once the exporters are familiar with the new system and the bulk upload option.

Respondents: All exporters of wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef, pork, and any products thereof, and other commodities that the Secretary may designate as produced in the United States.

Estimated number of respondents: 416.

Estimated Annual Number of Responses per Respondent: 215.

Estimated Total Annual Reporting Burden: 44,720 hours.

Copies of this information collection can be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Request for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including validity of the methodology and assumption 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 report, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *https://www.regulations.gov* and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for OMB approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *RARequest@usda.gov.*

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2023–10250 Filed 5–12–23; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2023–0009]

Urban Agriculture and Innovative Production Advisory Committee

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Office of Urban Agriculture and Innovative Production (OUAIP) is seeking nominations for individuals to serve on the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). The UAIPAC advises the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices. The 12 members appointed by the Secretary of Agriculture are expected to serve a 3-year term. This specific nomination period includes four vacancies, including: the urban producer representative; the higher education or extension program represenative; the business and economic development representative; and a representative with related experience in urban, indoor, and other emerging agriculture production practices.

DATES: USDA will consider nominations received via email or postmarked by July 15, 2023.

ADDRESSES: Please send nominations via email to: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov.* Email is the preferred method for sending nominations; alternatively, nominations can be mailed to Brian Guse, Director of

Office of Urban Agriculture and Innovative Production, Department of Agriculture, 1400 Independence Avenue SW, Room 4627–S, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Markus Holliday, Coordinator, Office of Urban Agriculture and Innovative Production; telephone: (301) 974–1287; email: *UrbanAgricultureFederal AdvisoryCommitee@usda.gov.*

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Overview and Membership

Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended, by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334), directed the Secretary of Agriculture to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services. For additional background and member information visit the UAIPAC website at *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

The UAIPAC consists of 12 members including:

- 4 representatives who are agriculture producers including 2 individuals who are located in an urban area or urban cluster; and 2 individuals who are farmers that use innovative technology;
- 2 representatives from an institution of higher education or extension program;
- 1 representative from a nonprofit organizaton, which may include a public health, environmental, or community organization;
- 1 representative who represents business and economic development, which may include a business development entity, a chamber of commerce, a city government, or a planning organization;
- 1 expert with supply chain experience, which may include a food aggregator, wholesale food distributor, food hub, or an individual who has direct-to-consumer market experience;
- 1 representative from a financing entity; and
- 2 representatives with related experience or expertise in urban, indoor, and other emerging agriculture production practices, as determined by the Secretary.

Member Nominations

Nominations are open to the public. Any interested person or organization may nominate qualified individuals for membership, including self-nominations. Individuals who wish to be considered for membership must submit a nomination package to include the following:

(1) A completed background disclosure form (Form AD–755) signed by the nominee; *https://www.usda.gov/sites/default/files/documents/ad-755.pdf;*

(2) A brief summary explaining the nominee's interest in one or more open vacancies including any unique qualifications that address the membership composition and criteria described above;

(3) A resume providing the nominee's background, experience, and educational qualifications;

(4) Recent publications by the nominee relative to extending support for urban agriculture or innovative production (optional); and

(5) Letter(s) of endorsement (optional).

Please send nominations via email to: *UrbanAgricultureFederal AdvisoryCommittee@usda.gov* as the preferred method. Alternatively, nominations can be mailed to Brian Guse, Director of Office of Urban Agriculture and Innovative Production, Department of Agriculture, 1400 Independence Avenue SW, Room 4627–S, Washington, DC 20250.

Ethics Statement

To maintain the highest levels of honesty, integrity, and ethical conduct, no committee or subcommittee member may participate in any ''specific party matters'' (for example, matters are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with USDA in which the committee or subcommittee member has a direct financial interest. This includes the requirement for committee or subcommittee members to immediately disclose to the Designated Federal Officer (DFO) (for discussion with USDA's Office of Ethics) any specific party matter in which the member's immediate family, relatives, business partners or employer would be directly seeking to financially benefit from the committee's recommendations.

All members will receive ethics training to identify and avoid any actions that would cause the public to question the integrity of the committee's advice and recommendations. Members who are appointed as ''Representatives'' are not subject to Federal ethics laws because the appointment allows them to represent the point(s) of view of a particular group, business sector or segment of the public.

Members appointed as ''Special Government Employees'' (SGEs) are considered intermittent Federal employees and are subject to Federal ethics laws. SGE's are appointed due to their personal knowledge, academic scholarship, background or expertise. No SGE may participate in any activity in which the member has a prohibited financial interest. Appointees who are SGEs are required to complete and submit a Confidential Financial Disclosure Report (OGE–450 form) via the FDonline e-filing database system. Upon request USDA will assist SGEs in preparing these financial reports. To ensure the highest level of compliance with applicable ethical standards USDA will provide ethics training to SGEs on an annual basis. The provisions of these paragraphs are not meant to exhaustively cover all Federal ethics laws and do not affect any other statutory or regulatory obligations to which advisory committee members are subject.

USDA Equal Opportunity Statement

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, religion, sex (including gender identity and sexual orientation), disability, age, marital status, familial or parental status, income derived from a public assistance program, political beliefs, genetic information, 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).

USDA Non-Discrimination Policy

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

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.USDA* is an equal opportunity provider, employer, and lender.

Dated: May 3, 2023.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2023–10217 Filed 5–12–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Advisory Board: Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board or TTAB) will hold a meeting on Thursday, June 1, 2023. The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. The main purpose of this meeting is for Board members to discuss priority issues related to travel and tourism. The final agenda will be posted on the Department of Commerce website for the Board at *https://www.trade.gov/ttab-meetings* at least two days prior to the meeting.

DATES: Thursday, June 1, 2023, 9 a.m.–12 p.m. EDT. The deadline for members of the public to register for the meeting or to submit written comments for dissemination prior to the meeting is 5 p.m. EDT on Tuesday, May 30, 2023.

ADDRESSES: The meeting will be held in person in Washington, DC and virtually. The access information will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted by email to *TTAB@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Aguinaga, the United States Travel and Tourism Advisory Board, National Travel and Tourism Office, U.S. Department of Commerce; telephone: 202–482–2404; email: *TTAB@trade.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. Any member of the public requesting to join the meeting is asked to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Members of the public wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5 p.m. EDT on Tuesday, May 30, 2023, for inclusion in the meeting records and for circulation to the members of the Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Jennifer Aguinaga at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. EDT on Tuesday, May 30, 2023, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be transmitted to the Board but may not be considered during the meeting. Copies of Board meeting minutes will be available within 90 days of the meeting.

This Notice is published pursuant to the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. app. 9(c). It has been determined that the Committee is necessary and in the public interest. The Committee was established pursuant to Commerce's authority under 15 U.S.C. 1512, established under the FACA, as amended, 5 U.S.C. app., and with the concurrence of the General Services Administration.

Jennifer Aguinaga,

Designated Federal Officer, United States Travel and Tourism Advisory Board.

[FR Doc. 2023–10234 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

RIN 0693–XC127

National Cybersecurity Center of Excellence (NCCoE) Software Supply Chain and DevOps Security Practices

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

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide letters of interest describing products and

technical expertise to support and demonstrate an applied risk-based approach and recommendations for secure DevOps (software development and operations) and software supply chain practices for the *Software Supply Chain and DevOps Security Practices* project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address DevOps and software supply chain security challenges identified under the *Software Supply Chain and DevOps Security Practices* project. Participation in the project is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than June 14, 2023.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *devsecops-nist@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Interested parties can request the letter of interest template by visiting *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices* and completing the letter of interest webform. NIST will announce the completion of the selection of participants and inform the public that it is no longer accepting letters of interest for this project at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices.* Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium NCCoE Cooperative Research and Development Agreement (CRADA) with NIST; a template NCCoE Consortium CRADA can be found at: *https://nccoe.nist.gov/library/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Paul Watrobski via email *devsecops-nist@nist.gov,* by telephone at (240) 479–1830, or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the *Software Supply Chain and DevOps Security Practices* project are available at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop and document an applied risk-based approach and recommendations for secure DevOps (DevSecOps) and software supply chain practices consistent with the Secure Software Development Framework (SSDF), Cybersecurity Supply Chain Risk Management (C–SCRM), and other NIST, government, and industry guidance. Industry, government, and other organizations could then apply the guidelines when choosing and implementing DevSecOps practices in order to improve the security of the software they develop and operate. That, in turn, would improve the security of the organizations using that software, and so on throughout the software supply chain.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate an applied risk-based approach and recommendations for secure DevOps (software development and operations) and software supply chain practices for the *Software Supply Chain and DevOps Security Practices* project. The full project can be viewed at: *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices.*

Interested parties can access the template for a letter of interest by visiting the project website at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices* and completing the letter of interest webform. On completion of the webform, interested parties will receive access to the letter of interest template, which the party must complete, certify as accurate, and submit to NIST by email or hardcopy. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed in the Requirements for Letters of Interest section below, up to the number of participants in each category necessary to carry out this project. There may be continuing opportunity to participate even after initial activity commences for participants who were not selected initially or have submitted the letter of interest after the selection process. Selected participants will be required to enter into an NCCoE consortium CRADA with NIST (for reference, see **ADDRESSES** section above).

When the project has been completed, NIST will post a notice on the *Software Supply Chain and DevOps Security Practices* project website at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices* announcing the completion of the project.

Project Objective

This project's goal is to develop and document an applied risk-based approach and recommendations for DevSecOps practices. This project is intended to help enable organizations to maintain the velocity and volume of software delivery in a cloud-native way and take advantage of automated tools. The project's objective is to produce practical and actionable guidelines that meaningfully integrate security practices into development methodologies. The project intends to demonstrate how an organization can generate artifacts as a byproduct of its DevSecOps practices to support and inform the organization's self-attestation and declaration of conformance to applicable NIST and industry-recommended practices for secure software development and cybersecurity supply chain risk management. The project will also strive to demonstrate the use of current and emerging secure development frameworks, practices, and tools to address cybersecurity challenges.

Project Background

DevOps brings together software development and operations to shorten development cycles, allow organizations to be agile, and maintain the pace of innovation while taking advantage of cloud-native technology and practices. Industry and government have fully embraced and are rapidly implementing these practices to develop and deploy software in operational environments, often without a full understanding and consideration of security. The NCCoE is undertaking a practical demonstration of technology and tools that meaningfully integrate security practices into development methodologies. DevSecOps helps ensure that security is addressed as part of all DevOps practices by integrating security practices and automatically generating security and compliance artifacts throughout the processes and

environments, including software development, builds, packaging, distribution, and deployment. Furthermore, there is increasing recognition of how security concerns inherent in modern day supply chains directly affect the DevOps process. DevSecOps practices can help identify, assess, and mitigate cybersecurity risk for the software supply chain.

Project Activities

To meet the need to accelerate widespread adoption of improved DevOps and software supply chain security practices across various industry sectors, the NCCoE *Software Supply Chain and DevOps Security Practices* project will produce and demonstrate practical and actionable guidelines that meaningfully integrate security practices into development methodologies. Additionally, the project will demonstrate how an organization can generate artifacts as a byproduct of its DevSecOps practices to support and inform the organization's self-attestation and declaration of conformance to applicable NIST and industry-recommended practices for secure software development and cybersecurity supply chain risk management. The project will also strive to demonstrate the use of current and emerging secure development frameworks, practices, and tools to address cybersecurity challenges. Lessons learned during the project will be shared with the security and software development communities to inform improvements to secure development frameworks, practices, and tools. Lessons learned will also be shared with standards developing organizations to inform their DevSecOps-related work. The intention is to demonstrate DevSecOps practices, especially using automation, that would apply to organizations of all sizes and from all sectors, and to development for information technology (IT), operational technology (OT), Internet of Things (IoT), and other technology types.

Project Outcomes

The proposed proof-of-concept solution(s) will integrate free and open source software (FOSS) and closed source software to demonstrate the use case scenarios detailed in Section 2 of the *Software Supply Chain and DevOps Security Practices* project description at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices.* This project will result in a publicly available NIST Cybersecurity Practice Guide as a Special Publication 1800 series, a detailed implementation guide describing the practical steps needed to implement a cybersecurity reference design that addresses this challenge. Supporting outputs may include public tools, code, and white papers.

Requirements for Letters of Interest: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in Section 3 of the *Software Supply Chain and DevOps Security Practices* project description at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices* and include, but are not limited to:

- Developer endpoints, including PCs (desktops or laptops) and virtual environments, both PC-based and cloud-based
- Network/infrastructure devices
- Services and applications, both on-premises and cloud-based, including:
  - Toolchains and their tools (build tools, packaging tools, repositories, etc.)
  - Vulnerability management (patch and configuration)
  - Version control software and services
  - Software security review, analysis, and testing tools (*e.g.,* static and dynamic code analyzers, fuzzers, just-in-time secure coding training for developers)
  - Secure software design tools (*e.g.,* threat modeling tools)
  - Memory safe programming languages
- Build systems (test, integration, production)
- Distribution/delivery systems
- Production systems that host apps

Each responding organization's letter of interest should identify how their products help address one or more of the following demonstration scenarios in Section 2 of the *Software Supply Chain and DevOps Security Practices* project description at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices:*

- Free and open source software development
- Closed source software development

In their letters of interest, responding organizations need to acknowledge the importance of and commit to provide:

1. Access for all participants' project teams to DevOps component interfaces and the organization's experts necessary to make functional connections among DevOps components.

2. Support for development and demonstration of the *Software Supply Chain and DevOps Security Practices* project at the NCCoE, which will be conducted in a manner consistent with the most recent version of the following standards and guidance: Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (NIST SP 800–161) (*https://doi.org/10.6028/NIST.SP.800-161r1*), Framework for Improving Critical Infrastructure Cybersecurity (Cybersecurity Framework) (*https://www.nist.gov/cyberframework/framework*), and Secure Software Development Framework (SSDF) (NIST SP 800–218) (*https://doi.org/10.6028/NIST.SP.800-218*). Additional details about the *Software Supply Chain and DevOps Security Practices* project are available at *https://www.nccoe.nist.gov/projects/software-supply-chain-and-devops-security-practices.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the NCCoE consortium CRADA in the development of the *Software Supply Chain and DevOps Security Practices* project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the DevSecOps proof-of-concept builds and their characteristics sufficient to permit other organizations to develop and deploy DevSecOps practices that meet the objectives of the *Software Supply Chain and DevOps Security Practices* project. These descriptions will be public information.

Under the terms of the NCCoE consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, platform documentation, and demonstration activities.

The dates of the demonstration of the *Software Supply Chain and DevOps Security Practices* project capability will

be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/*. The expected outcome will demonstrate how the components of the solutions that address *Software Supply Chain and DevOps Security Practices* can enhance capabilities that provide assurance of management of identified risks while continuing to meet industry sectors' compliance requirements. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/*.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023–10221 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Heeia National Estuarine Research Reserve; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold an in-person public meeting to solicit input on the performance evaluation of the Heeia National Estuarine Research Reserve. NOAA also invites the public to submit written comments.

DATES: NOAA will hold an in-person public meeting on Tuesday, June 6, 2023, at 6 p.m. Hawaii Standard Time. NOAA will consider all relevant written comments received by Friday, June 16, 2023.

ADDRESSES: Comments may be submitted by one of the following methods:

- *In-Person Public Meeting:* Provide oral comments during the in-person public meeting on Tuesday, June 6, 2023, at 6 p.m. Hawaii Standard Time at Kakoo Oiwi, 46–406 Kamehameha Hwy., Kaneohe, HI 96744.
- *Email:* Send written comments to Michael Migliori, Evaluator, NOAA Office for Coastal Management, at *Michael.Migliori@noaa.gov.* Include ''Comments on Performance Evaluation of Heeia National Estuarine Research Reserve'' in the subject line of the message. NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comments. Comments that are not related to the performance evaluation of the Heeia National Estuarine Research Reserve or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Migliori, Evaluator, NOAA Office for Coastal Management, by email at *Michael.Migliori@noaa.gov* or by phone at (443) 332–8936. A copy of the reserve management plan, may be viewed and downloaded at *http://coast.noaa.gov/czm/evaluations/*. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Michael Migliori.

SUPPLEMENTARY INFORMATION: Section 315(f) of the Coastal Zone Management Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved national estuarine research reserves. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, NOAA will consider whether the management and operation of the reserve is deficient and whether the research at the reserve is consistent with the research guidelines developed under section 315(c) of the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

(Authority: 16 U.S.C. 1461)

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–10258 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC920]

Determination of Overfishing or an Overfished Condition

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

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Pacific sardine is still overfished. NMFS, on behalf of the Secretary, is required to provide this notice whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Caroline Potter, (301) 427–8522.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must publish a notice in the **Federal Register** whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Pacific sardine remains overfished. This determination is based on an update assessment completed in 2022 using data through 2021, which indicates that the stock remains overfished because the biomass is less than the minimum stock size threshold. NMFS continues to work with the Pacific Fishery Management Council to rebuild the Pacific sardine stock.

Dated: May 10, 2023.

Jennifer M. Wallace,

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

[FR Doc. 2023–10320 Filed 5–12–23; 8:45 am]

BILLING CODE 3510–22–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

Notice of Public Hearing

AGENCY: U.S. International Development Finance Corporation.

ACTION: Announcement of public hearing.

SUMMARY: The Board of Directors of the U.S. International Development Finance

Corporation (''DFC'') will hold a public hearing on June 6, 2023. This hearing will afford an opportunity for any person to present views in accordance with section 1413(c) of the BUILD Act of 2018. Those wishing to present at the hearing must provide advance notice to the agency as detailed below.

DATES:

Public hearing: 2 p.m., Tuesday, June 6, 2023.

Deadline for notifying agency of an intent to attend or present at the public hearing: 5 p.m., Wednesday, May 24, 2023.

Deadline for submitting a written statement: 5 p.m., Wednesday, May 24, 2023.

ADDRESSES:

Public hearing: Virtual; access information provided at the time of attendance registration.

You may send notices of intent to attend, present, or submit a written statement to Benjamin Lorenz, DFC Deputy Corporate Secretary, via email at *Benjamin.lorenz@dfc.gov.*

Instructions: A notice of intent to attend the public hearing or to present at the public hearing must include the individual's name, title, organization, address, email, telephone number, and a concise summary of the subject matter to be presented. Oral presentations may not exceed five (5) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard. Submission of written statements must include the individual's name, title, organization, address, email, and telephone number. The statement must be typewritten, double-spaced, and may not exceed ten (10) pages.

FOR FURTHER INFORMATION CONTACT: Benjamin Lorenz, DFC Deputy Corporate Secretary, (202) 702–6147, or *Benjamin.lorenz@dfc.gov.*

SUPPLEMENTARY INFORMATION: The public hearing will take place via video- and teleconference. Upon registering, participants and observers will be provided instructions on accessing the hearing. DFC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the time of the hearing.

(Authority: 22 U.S.C. 9613(c))

Benjamin Lorenz,

Deputy Corporate Secretary.

[FR Doc. 2023–10239 Filed 5–12–23; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0016]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition University (DAU), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by June 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Acquisition University, Data Services Management; OMB Control Number 0704–0591.

Type of Request: Revision.

Survey

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 208.

Needs and Uses: The Data Services Management provides administrative and academic capabilities and functions related to student registrations, account requests, courses attempted and completed, and graduation notifications to DoD training systems.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: May 8, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–10271 Filed 5–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0043]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 14, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness, Military Community and Family Policy) Office of Special Needs, ATTN: Tomeshia Barnes, 1500 Defense Pentagon, Washington, DC 20301–1500, or call 571–372–4022.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exceptional Family Member Program; DD Form 2792, Family Member Medical Summary, and DD Form 2792–1, Special Education/Early Intervention Summary; OMB Control Number 0704–0411.

Needs and Uses: This information collection is necessary to identify any special medical (DD Form 2792) and/or educational (DD Form 2792–1) needs of military dependents. The purpose of this information collection is to (1) enroll sponsors into the Exceptional Family Member Program (EFMP), (2) consider the special needs of family members and the availability of medical and educational services through the EFMP assignment coordination process and the Family Member Travel Screening (FMTS) process, and (3) advise civilian employees about the availability of medical and educational services to meet the special needs of their family members in overseas locations. Local and state school and early intervention personnel complete DD Form 2792–1 for children requiring special educational services. The DD Form 2792 and DD Form 2792–1 are also used by TRICARE Managed Care Support Contractors to support a family member's application for further entitlements, and other Service-specific programs that require enrollment in the EFMP. The DD Form 2792 and DD Form 2792–1 associated with this information collection may be voluntarily submitted by a perspective civilian employee to the civilian personnel office to identify family members who have special needs to advise the civilian employee of the availability of services in the overseas location where they will be potentially employed. The DD Form 2792–1 must be completed if the civilian employee intends to enroll his or her child in a school funded by the DoD.

Affected Public: Individuals or households.

Annual Burden Hours: 15,617.

DD 2792:

Family Members: 4,652.

Medical Providers: 4,653.

DD 2792–1:

Family Members: 1,409.

Medical Providers: 4,903.

Number of Respondents: 98,608.

DD 2792:

Family Members: 55,828.

Medical Providers: 11,166.

DD 2792–1:

Family Members: 16,906.

Special Education Teachers: 14,708.

Responses per Respondent: 1.

DD 2792:

Family Members: 1.

Medical Providers: 1.

DD 2792–1:

Family Members: 1.

Special Education Teachers: 1.

Annual Responses: 98,608.

DD 2792:

Family Members: 55,828.

Medical Providers: 11,166.

DD 2792–1:

Family Members: 16,906.

Special Education Teachers: 14,708.

Average Burden per Response:

DD 2792:

Family Members: 5 minutes.

Medical Providers: 25 minutes.

DD 2792–1:

Family Members: 5 minutes.

Special Education Teachers: 20 minutes.

Frequency: As required.

Dated: May 8, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–10273 Filed 5–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department Defense (DoD).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Health Board (DHB) will take place.

DATES: Open to the public Wednesday, June 28, 2023 from 10:00 a.m. to 5:00 p.m. Eastern time.

ADDRESSES: The address of the open meeting is 8111 Gatehouse Rd., Room 345, Falls Church, VA 22042. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: CAPT Gregory H. Gorman, Medical Corps, U.S. Navy, 703–275–6060 (voice), *gregory.h.gorman.mil@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042. Website: *http://www.health.mil/dhb.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda, is available on the DHB website, *http://www.health.mil/dhb.* A copy of the agenda or any updates to the agenda for the June 28, 2023, meeting will be available on the DHB website. Any other materials presented in the meeting may also be obtained at the meeting.

Purpose of the Meeting: The DHB provides independent advice and recommendations to maximize the safety and quality of, as well as access to, health care for DoD health care beneficiaries. The purpose of the meeting is to provide progress updates on specific tasks before the DHB. In addition, the DHB will receive information briefings on current issues related to military medicine.

Agenda: The DHB anticipates receiving two decision briefings on Eliminating Racial and Ethnic Health Disparities in the Military Health System and on Beneficiary Mental Health Access. The DHB also expects an information brief of Health Communications within the Military Health System and an introduction to a new DHB tasking on effective public communication strategies with DoD personnel.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting will be held in-person and virtually and is open to the public from 10:00 a.m. to 5:00 p.m. Seating and virtual participation is limited and is on a first-come basis. All members of the public who wish to participate must register by emailing their name, rank/title, and organization/company to *dha.ncr.dhb.mbx.defense-health-board@health.mil* or by contacting Mr. Rubens Lacerda at (703) 275–6012 no later than Wednesday, June 21, 2023. Additional details will be required from all members of the public attending in-person that do not have Gatehouse building access. Once registered, participant access information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Rubens Lacerda at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements: Any member of the public wishing to provide comments to the DHB related to its current taskings or mission may do so at any time in accordance with section 10(a)(3) of the FACA, 41 CFR 102–3.105(j) and 102–3.140, and the procedures described in this notice. Written statements may be submitted to the DHB's Designated Federal Officer (DFO), Captain Gorman, at *gregory.h.gorman.mil@health.mil.* Supporting documentation may also be included, to establish the appropriate historical context and to provide any necessary background information. If the written statement is not received at least five (5) business days prior to the meeting, the DFO may choose to postpone consideration of the statement until the next open meeting. The DFO will review all timely submissions with the DHB President and ensure they are provided to members of the DHB before the meeting that is subject to this notice. After reviewing the written comments, the President and the DFO may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting.

Dated: May 4, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–10242 Filed 5–12–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board; Request for Nominations

AGENCY: U.S. Army Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of request for nominations.

SUMMARY: The Department of the Army is publishing this notice to request nominations to serve as representatives on the Inland Waterways Users Board (''the Board''), sponsored by the U.S. Army Corps of Engineers. The Board provides independent advice and recommendations to the Secretary of the Army and the Congress. The Secretary of the Army recommends its 11 (eleven) representative organizations to the Secretary of Defense for approval. This notice is to solicit nominations for seven (7) appointments or more for terms that will begin by January 31, 2024. For additional information about the Board, please visit the committee's website at *http://www.iwr.usace.army.mil/Missions/Navigation/Inland-Waterways-Users-Board/.*

ADDRESSES: Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: Mr. Mark R. Pointon, Designated Federal Officer (DFO) for the Inland Waterways Users Board, CEIWR–NDC, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Alternatively, contact Mr. Steven D. Riley, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–659–3097; and by email at *Steven.D.Riley@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of representative organizations to the Board are covered by provisions of section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. Selection. Representative organizations are to be selected from the spectrum of commercial carriers and shippers using the inland and intracoastal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles and tonnage statistics.

b. Service. The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and major rehabilitation priorities and spending levels for commercial navigation improvements and report its recommendations annually to the Secretary and Congress.

c. Appointment. The operation of the Board and appointment of representative organizations are subject to chapter 10, 5 U.S.C. (commonly known as the Federal Advisory Committee Act) and departmental implementing regulations. Individuals invited or appointed to serve on the Board, or its subcommittees, must be U.S. citizens and are appointed pursuant to 33 U.S.C. 2251(f)(2), the members of the Board serve as representative members and shall be appointed pursuant to 41 CFR 102–3.130(a), and in accordance with DoD policy and procedures. Representative organizations serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in section 302 for the selection of representative organizations to the Board, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) Carriers and Shippers. The law uses the terms ''primary users and shippers.'' Primary users have been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Representative companies are appointed to the Board, and they must be either a carrier or shipper or both. For that purpose a trade or regional association is neither a shipper nor primary user.

(2) Geographical Representation. The law specifies ''various'' regions. For the purposes of the Board, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River

and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one representative organization, with that representation determined by the regional concentration of the firm's traffic on the waterways.

(3) Commodity Representation. Waterway commerce has been aggregated into six commodity categories based on ''inland'' ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All Other. A consideration in the selection of representative organizations to the Board will be that the commodities carried or shipped by those firms will be reasonably representative of the above commodity categories.

d. Nomination. Reflecting preceding selection criteria, the current representation by the six (6) organizations whose terms are expiring includes Regions 1, 2, 3, 5 and 6, representation of four carriers, 1 shipper and two of both, and commodity representation of Food and Farm Products; Coal and Coke; Petroleum, Crude and Products; Chemicals and Allied Products; and Other.

Individuals, firms or associations may nominate representative organizations to serve on the Board. Nominations will:

(1) Include the commercial operations of the carrier and/or shipper representative organization being nominated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in the most recent year (or years), using the waterway regions and commodity categories previously listed.

(2) State the region(s) to be represented.

(3) State whether the nominated representative organization is a carrier, shipper or both.

(4) Provide the name of an individual to be the principal person representing the organization and information pertaining to their personal qualifications, to include a current within six months biography or resume.

Previous nominations received in response to notices published in the **Federal Register** in prior years will not be retained for consideration. Re-nomination of representative organizations is required.

e. *Deadline for Nominations.* All nominations must be received at the address shown above no later than June 15, 2023.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works, U.S. Army Corps of Engineers.

[FR Doc. 2023–10284 Filed 5–12–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0087]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Green Ribbon Schools Nominee Presentation Form

AGENCY: Office of Communications and Outreach (OCO), 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 July 14, 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–0087. 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 Andrea Falken, (202) 987–0855.

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: U.S. Department of Education Green Ribbon Schools Nominee Presentation Form.

OMB Control Number: 1860–0509.

Type of Review: Extension without change of a currently approved ICR.

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

Total Estimated Number of Annual Responses: 90.

Total Estimated Number of Annual Burden Hours: 22.

Abstract: Begun in 2011–2012, U.S. Department of Education Green Ribbon Schools (ED–GRS) is a recognition award that honors schools, districts, and postsecondary institutions that are making great strides in three Pillars: (1) reducing environmental impact and costs, including waste, water, energy use, and transportation; (2) improving the health and wellness of students and staff, including environmental health of

premises, nutrition, and fitness; and (3) providing effective sustainability education, including STEM, civic skills, and green career pathways.

The award is a tool to encourage State education agencies, stakeholders and higher education officials to consider matters of facilities, health and environment comprehensively and in coordination with State health, environment and energy counterparts. In order to be selected for Federal recognition, schools, districts and postsecondary institutions must be high achieving in all three of the above Pillars, not just one area. Schools, districts, colleges and universities apply to their State education authorities. State authorities can submit up to six nominees to ED, documenting achievement in all three Pillars. This information is used at the Department to select the awardees.

ED collects information on nominees from State nominating authorities regarding their schools, districts, and postsecondary nominees. State agencies are provided sample applications for all three types of nominees for their use and adaptation. Most states adapt the sample to their State competition. There is no one Federal application for the award, but rather various applications determined by States. They do use a required two-page Nominee Submission Form as a cover sheet, which ED provides. This document, in school, district, and postsecondary submission formats is attached. The burden varies greatly from State authority to authority and how they chose to approach the award.

The recognition award is part of a U.S. Department of Education (ED) effort to identify and communicate practices that result in improved student engagement, academic achievement, graduation rates, and workforce preparedness, and reinforce Federal efforts to increase energy independence and economic security.

Encouraging resource efficient schools, districts, and IHEs allows administrators to dedicate more resources to instruction rather than operational costs. Healthy schools and wellness practices ensure that all students learn in an environment conducive to achieving their full potential, free of the health disparities that can aggravate achievement gaps. Sustainability education helps students engage in hands-on learning, hone critical thinking skills, learn many disciplines and develop a solid foundation in STEM subjects. It motivates postsecondary students in many disciplines, and especially those underserved in STEM subjects, to persist and graduate with sought after degrees and robust civic skills.

So that the Administration can receive States' nominations, ED seeks to provide the Nominee Presentation Form to States—essentially a cover sheet for States' evaluation of their nominees to ED—in three versions: one for school nominees, another for district nominees, and a third form for postsecondary nominees.

Dated: May 9, 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. 2023–10222 Filed 5–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0042]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children

AGENCY: Office of Elementary and Secondary Education (OESE), 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 14, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Todd Stephenson, (202) 205–1645.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected and Delinquent Children.

OMB Control Number: 1810–0060.

Type of Review: Extension without change of a currently approved ICR.

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

Total Estimated Number of Annual Responses: 2,812.

Total Estimated Number of Annual Burden Hours: 4,061.

Abstract: The U.S. Department of Education (ED) is requesting a three-year extension of the Annual Report of Children in Institutions for Neglected or Delinquent Children, Adult Correctional Institutions, and Community Day Programs for Neglected and Delinquent Children. Approval of this form is needed in order to continue the on-going collection of data used to allocate funds authorized under title I, part A and title I, part D, subparts 1 and 2 of the Elementary and Secondary Education Act of 1965 (ESEA). Title I, part A provides formula grants to local educational agencies (LEAs), through State educational agencies (SEAs), to improve the teaching and learning of at-risk students in high-poverty schools. In order to calculate title, I, part A allocations, ED must annually collect data on the number of children living in locally operated institutions for neglected or delinquent (N or D) children.

Dated: May 10, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–10298 Filed 5–12–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0041]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Loan Rehabilitation: Reasonable and Affordable Payments

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 14, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Loan Rehabilitation: Reasonable and Affordable Payments.

OMB Control Number: 1845–0120.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Responses: 139,000.

Total Estimated Number of Annual Burden Hours: 139,000.

Abstract: Borrowers who have defaulted on their Direct Loan or FFEL Program loans may remove those loans from default through a process called rehabilitation. Loan rehabilitation requires the borrower to make 9 payments within 10 months. The payment amount is set according to one of two formulas. The second of the two formulas use the information that is collected in this form. The form makes it easier for borrowers to complete through simplified language, and easier for loan holders through a uniform, common format.

Dated: May 10, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

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DEPARTMENT OF ENERGY

Notice of Intent and Request for Information: Designation of National Interest Electric Transmission Corridors

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of intent (NOI); request for information (RFI).

SUMMARY: Pursuant to the Federal Power Act (''FPA''), the U.S. Department of Energy (''DOE'' or the ''Department'') Grid Deployment Office (''GDO'') is issuing this Notice of Intent (''NOI'') to establish a process to designate ''route-specific'' National Interest Electric Transmission Corridors (''NIETCs,'' pronounced \NIT-sees\). Through this process, DOE intends to invite interested entities to propose for designation as a NIETC a potential route where one or more potential transmission projects could be located within a geographic area where the Department has identified transmission need(s) (*i.e.,* present or expected electric transmission capacity constraints or congestion that adversely affects consumers) and where the Department has made other statutory findings. DOE intends to develop final guidelines and procedures for interested entities to propose that DOE designate a NIETC. In this NOI, DOE identifies certain key program design elements that it believes should form the basis of an applicant-driven, route-specific process to designate NIETCs. In the accompanying RFI, DOE seeks comments from the public and interested parties on these identified program elements and any additional program elements that should be included to assist in developing final guidelines, procedures, and evaluation criteria for the applicant-driven, route-specific NIETC designation process.

DATES: Written comments and information are requested on or before June 29, 2023.

ADDRESSES: Interested parties may submit comments through the Federal eRulemaking Portal at *www.regulations.gov.* For detailed instructions on submitting comments and additional information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The docket for this activity, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov index.* However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to: *NIETC@hq.doe.gov. Questions about the NOI and RFI may be addressed to Molly Roy at (240) 805–4298.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Pursuant to section 216 of the Federal Power Act (''FPA'') (16 U.S.C. 824p), the U.S. Department of Energy (''DOE'' or the ''Department'') Grid Deployment Office (''GDO'') is issuing this Notice of

Intent (''NOI'') to establish a process to designate ''route-specific'' National Interest Electric Transmission Corridors (''NIETCs,'' pronounced \NIT-sees\). Through this process, DOE intends to invite interested entities to propose for designation as a NIETC a potential route where one or more potential transmission projects could be located within a geographic area where the Department has identified transmission need(s) (*i.e.,* present or expected electric transmission capacity constraints or congestion that adversely affects consumers) and where the Department has made other statutory findings. Interested entities will be required to provide information about the potential route necessary to fulfill the statutory criteria for designation, as well as certain environmental information about the potential route to facilitate DOE's ability to efficiently complete its responsibilities under the National Environmental Policy Act (''NEPA''). DOE is also issuing a Request for Information (''RFI'') with this NOI to gather input to inform the development of future application guidance and procedures for entities seeking to propose a route as a NIETC, as well as the development of information DOE will request in order to evaluate proposals. DOE plans to issue final application guidance concurrent with the finalization of the National Transmission Needs Study (''Needs Study''), anticipated to be released in late summer of 2023.

DOE anticipates that, generally, routes proposed for potential designation as a NIETC may be associated with specific transmission projects under active development, meaning that a potential applicant has progressed beyond the preliminary concept and has begun actively routing the project and engaging in community and landowner outreach, land surveys, or initiation of environmental compliance work. As such, DOE intends to designate NIETCs that are ''route-specific,'' meaning they encompass narrow areas that are under consideration for the location of specific potential project(s), and which are sufficient for the construction, maintenance, and safe operation thereof in accordance with any applicable regulatory requirements. Designation of a NIETC does not constitute selection of or a preference for a specific transmission project for financial, siting, or industry planning purposes; selection for these other purposes will continue to occur through established planning and regulatory processes.[1]

DOE is considering this process for designating NIETCs in recognition of the fact that such designations would occur in areas experiencing the greatest need for immediate transmission development and would unlock new financing and regulatory tools to spur investment in those areas. The recently enacted Infrastructure Investment and Jobs Act (''IIJA'') and Inflation Reduction Act (''IRA'') contain new public-private partnership and loan authorities that DOE can use to spur construction of transmission projects in NIETCs. In addition, section 216(b) of the FPA, as amended by the IIJA, allows the Federal Energy Regulatory Commission (''FERC'') to issue permits to site transmission facilities within NIETCs when certain statutory conditions are met.

NIETCs may encompass areas where multiple transmission projects could be located, providing an opportunity to coordinate environmental reviews and improve the efficiency and timeliness of permitting of these projects. DOE will, as appropriate, consult from an early stage with Federal, Tribal, State, and local authorities responsible for transmission siting and/or permitting on potential NIETC designation to develop appropriate and efficient timelines for decision-making. Where projects in NIETCs indicate an intention to seek siting permits from FERC under section 216(b) of the FPA, DOE intends to coordinate with FERC to the maximum extent practicable to avoid redundancy and promote efficiency in environmental reviews.

DOE intends to develop final guidelines and procedures for interested entities to propose that DOE designate a NIETC. In this NOI, DOE identifies certain key program design elements that it believes should form the basis of an applicant-driven, route-specific process to designate NIETCs. In the accompanying RFI, DOE seeks comments from the public and interested parties on these identified program elements and any additional program elements that should be included to assist in developing final guidelines, procedures, and evaluation criteria for the applicant-driven, route-specific NIETC designation process.

II. Background

A reliable and resilient electric transmission system is essential to the Nation's economic, energy, and national security. Additional transmission capacity is necessary to meet the challenges of more frequent extreme weather and other disruptive events, provide access to diverse sources of clean electricity, and meet new electricity demands driven by electrification of end-use sectors like transportation and industry.

The Administration has set national goals to reduce U.S. greenhouse gas emissions at least 50 percent below 2005 levels in 2030 and to reach net zero emissions by 2050. These goals include a transition to a 100% clean electric power sector by 2035,[2] which would require an increase in transmission system capacity estimated to total between 1.3 to 2.9 times the amount of existing transmission capacity.[3] Recent independent analysis has also found that transmission systems may need to expand by 60 percent by 2030, and may need to triple by 2050, to deliver clean electricity to consumers.[4] The proliferation of State and local clean energy standards and goals and private-sector clean energy purchase commitments[5] further underscores the Nation's need for additional transmission infrastructure.[6] The incorporation of clean energy resources facilitated by additional

[1] In the future, DOE may, under its authority in the Federal Power Act, also evaluate routes for NIETC designation that are not necessarily associated with any particular project under development, provided that such a route would facilitate the development of future transmission projects in the national interest.

[2] *See* Executive Order 14008 of Jan. 27, 2021, Tackling the Climate Crisis at Home and Abroad, 86 FR 7619 (Feb. 1, 2021), *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad; Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies* (Apr. 22, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/.*

[3] *See* Paul Denholm, et al., *Examining Supply-Side Options to Achieve 100% Clean Electricity by 2035,* (Aug, 2022), available at: *www.nrel.gov/docs/fy22osti/81644.pdf.*

[4] Eric Larson, et al., *Net-Zero America: Potential Pathways, Infrastructure, and Impacts,* (Dec. 15, 2020), available at: *https://netzeroamerica.princeton.edu/img/Princeton%20NZA%20FINAL%20REPORT%20SUMMARY%20(29Oct2021).pdf.*

[5] For example, in November 2022, the Clean Energy Buyers Alliance reported that ''[c]orporate energy customers have played an influential role in the clean energy transition by accelerating over 57 gigawatts of clean energy in the U.S. alone.'' *Corporate and Government Collaboration for Clean Energy Investment Moves from Commitment to Action: Up to $100 Billion in Clean Energy Investment Potential across the World* Bureau of Energy Resources, Washington DC, (Nov. 2022) available at *https://www.state.gov/corporate-and-government-collaboration-for-clean-energy-investment-moves-from-commitment-to-action-up-to-100-billion-in-clean-energy-investment-potential-across-the-world/.*

[6] *See* Database of State Incentives for Renewables & Efficiency (DSIRE), *Renewable & Clean Energy Standards,* (Nov. 2022), available at: *https://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2022/11/RPS-CES-Nov2022.pdf.*

transmission development will also expand energy resource diversity, promote resilience and reliability of the Nation's electricity grid, and lower costs to consumers by adding new low cost electricity supply.[7]

Finally, the recently enacted IIJA and IRA together make significant investments in clean energy manufacturing and generation, and the electrification of homes, businesses, and vehicles. The benefit of those investments will not be realized fully unless the United States can quickly expand enabling electric transmission infrastructure.

Designation of NIETCs is one of many tools that DOE has available to facilitate timely development of transmission infrastructure to meet these needs. As discussed in more detail below, designation of NIETCs can assist in focusing commercial facilitation, signal opportunities for beneficial development to transmission planning entities, and unlock siting and permitting tools for transmission projects in identified areas where present or expected future congestion is negatively impacting consumers.

A. Identification of Transmission Needs Through the National Transmission Needs Study

Congress has emphasized the need to strengthen transmission infrastructure throughout the Nation and has tasked DOE with identifying transmission needs and facilitating the planning and deployment of transmission infrastructure to meet those needs.[8] Directly relevant to the establishment of NIETCs, section 216(a) of the FPA directs DOE to conduct a study of electric transmission constraints and congestion on a triennial basis and, on the basis of that study and other information, designate geographic areas as NIETCs.

DOE is in the process of fulfilling the threshold statutory study requirement through the completion of the Needs Study. Consistent with the authority provided to DOE by section 216(a) of the FPA as amended by the IIJA, the Needs Study will catalog both historical and anticipated electric transmission needs, defined as the existence of present or expected electric transmission capacity constraints or congestion in a geographic area. The Needs Study will identify high-priority national transmission needs—specifically, opportunities for linking areas with new transmission facilities or upgraded existing facilities, including non-wire alternatives, to improve reliability and resilience of the power system; alleviate transmission congestion on an annual basis; alleviate transmission congestion during real-time operations; alleviate power transfer capacity limits between neighboring regions; deliver cost-effective generation to high-priced demand; or meet projected future generation, electricity demand, or reliability requirements.

Pursuant to sections 216(a)(1) and (3) of the FPA, DOE has initiated and continues to consult with affected States, Indian Tribes, and appropriate regional entities in preparing the Needs Study. In February 2023, DOE released a draft of the Needs Study for public comment with a comment deadline of April 20, 2023.[9]

B. Purpose of Designating NIETCs

Designation of a NIETC is a prerequisite to the ability of DOE and FERC to use certain statutory tools to advance the development of transmission facilities necessary to relieve current and expected capacity constraints and congestion and spur the buildout of a reliable and resilient national transmission system that facilitates the achievement of national and subnational greenhouse gas emissions reduction goals and reduces the cost of delivered power for consumers.

First, both the IIJA and IRA appropriated funds that can be used by DOE to help overcome commercial hurdles to the development of transmission facilities within NIETCs. Section 40106 of the IIJA [10] enacted the Transmission Facilitation Program, appropriating $2.5 billion to DOE to provide commercial facilitation to support the construction of high capacity new, replacement, or upgraded transmission lines. Under this provision, DOE is authorized to enter into public-private partnerships to co-develop transmission projects located within NIETCs. Further, section 50151 of the IRA [11] established a Transmission Facility Financing program under which DOE can offer loan support to transmission facilities designated by the Secretary to be necessary in the national interest pursuant to section 216(a) of the FPA, and appropriated $2 billion to pay for the cost (*i.e.,* the ''credit subsidy'') of issuing such loans.

In addition, under section 216(b) of the FPA, as amended by the IIJA, designation of a NIETC permits an applicant developing a transmission line to seek a permit from the Federal Energy Regulatory Commission (''FERC'') for the construction or modification of electric transmission facilities within a designated NIETC, provided that certain other statutory conditions have been met.[12] Recently, FERC issued a Notice of Proposed Rulemaking proposing updated regulations that would implement this permitting authority, including regulations governing the environmental, cultural, and environmental justice resource information that applicants for a FERC-issued construction permit in a NIETC must submit.[13]

C. Statutory Requirements for Designation of NIETCs

The results of the Needs Study are a key input into the designation of NIETCs. Section 216(a)(2) of the FPA directs DOE to issue a report, based on the findings of the Needs Study or other information related to electric transmission capacity constraints or congestion, which may designate one or more NIETCs. Specifically, the Secretary may ''designate as a national interest electric transmission corridor any geographic area that—(i) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or (ii) is expected to experience such energy transmission capacity constraints or congestion.'' [14] In addition, section 216(a)(4) of the FPA, as amended by the IIJA, allows the Secretary to consider several additional factors in determining whether to designate a NIETC. Specifically, the Secretary may consider whether:

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

[7] *See* 87 FR 2769, ''Building a Better Grid Initiative to Upgrade and Expand the Nation's Electric Transmission Grid To Support Resilience, Reliability, and Decarbonization'' (January 19, 2022), *https://www.federalregister.gov/documents/2022/01/19/2022-00883/building-a-better-grid-initiative-to-upgrade-and-expand-the-nations-electric-transmission-grid-to.*

[8] *See, e.g.,* 42 U.S.C. 15926(a) (requiring the designation of energy right-of-way corridors across Federal lands for electric transmission and other energy projects); 16 U.S.C. 824p(h) (establishing procedures to ensure timely and efficient review of proposed transmission projects by Federal agencies); and 42 U.S.C. 16421 (giving additional authority for Western Area Power Administration and Southwestern Power Administration to participate with other entities in the development of transmission).

[9] *https://www.energy.gov/gdo/national-transmission-needs-study.*

[10] Public Law 117–58 (Nov. 11, 2021).

[11] Public Law 117–169 (Aug. 16, 2022).

[12] *See* 16 U.S.C. 824p(b).

[13] Applications for Permits to Site Interstate Electric Transmission Facilities, 181 FERC ¶ 61,205 (2022) (Notice of Proposed Rulemaking).

[14] 16 U.S.C. 824p(a)(2).

(B) (i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and

(ii) a diversification of supply is warranted;

(C) the energy independence or energy security of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy;

(E) the designation would enhance national defense and homeland security;

(F) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid;

(G) the designation—

(i) maximizes existing rights-of-way; and

(ii) avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and

(H) the designation would result in a reduction in the cost to purchase electric energy for consumers.

DOE is required to provide an opportunity for comment, and potentially for consultation as part of required environmental and cultural resource review processes, to affected States, Indian Tribes, and regional grid entities when determining the designation of a NIETC. DOE intends to engage from an early stage with Tribal, State, and local authorities responsible for transmission siting and/or permitting on the potential corridors for designation, as well as Communities of Interest.[15] When specific corridors under consideration present potential impacts to Tribal Nations, DOE will follow its policy established in Order 144.1 [16] to pursue meaningful government-to-government consultation. When engaging with Communities of Interest, DOE will follow the most recent Administration guidance on the Justice40 Initiative [17] and energy and environmental justice as applicable.

D. National Environmental Policy Act (''NEPA'') and Environmental and Cultural Resource Responsibilities

In a 2011 decision, *California Wilderness* v. *DOE,*[18] the federal Court of Appeals for the Ninth Circuit held that, pursuant to NEPA, DOE's designation of a NIETC—regardless of the lack of any siting decision made in that corridor—constitutes a major Federal action that may significantly affect the quality of the human environment such that documentation of environmental compliance is required.[19] As a result, to designate any NIETC following completion of the Needs Study, whether on the proposal of an applicant or on DOE's own motion, DOE must initiate processes necessary to meet its obligations pursuant to NEPA, section 106 of the National Historic Preservation Act, and any other obligations pursuant to relevant environmental laws (*e.g.,* section 7 of the Endangered Species Act).[20]

Accordingly, DOE must follow procedures under 10 CFR part 1021 to comply with section 102(2) of NEPA and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This part supplements, and is used in conjunction with, the CEQ regulations.

E. Related Authorities of FERC and Other Federal Agencies

As explained above, one effect of a NIETC designation is to delineate areas within which, under certain circumstances, FERC may ultimately grant permits for the construction or modification of electric transmission facilities pursuant to section 216(b) of the FPA. On November 16, 2006, FERC issued Order No. 689, which adopted regulations establishing filing requirements and procedures for entities seeking permits under section 216(b) of the FPA.[21] FERC also added a new section to its NEPA regulations, 18 CFR 380.16, which describes the specific environmental information that must be included in applications for permits to site transmission facilities under section 216(b). Section 380.16 currently requires each applicant to submit an environmental report that includes eleven resource reports.[22] As noted previously, FERC recently issued a Notice of Proposed Rulemaking proposing changes to these regulations which, if finalized, would, among other things, add new required resource reports.[23]

In addition, several agencies have worked to establish multi-function (including transmission) energy corridors on Federal lands in 11 western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) under section 368 of the Energy Policy Act (EPAct) of 2005 (EPAct 2005).[24] Specifically, Section 368 directs several agencies, including DOE, to designate these multi-use corridors on Federal lands.[25] Section 368 also directs the agencies to, when designating such corridors, account for the need for upgraded and new infrastructure and to take actions to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver energy.[26] On April 20, 2022, the Bureau of Land Management (BLM), the United States Forest Service, and DOE released the Final Regional Review Report for the West-wide Energy Corridors, which designated 5,000 miles of energy corridors (commonly referred to as ''Section 368 energy corridors'' or ''West-wide energy corridors'') for potential placement of electricity transmission and distribution infrastructure, among other energy transport projects. As preferred locations for energy transport projects on Federally administered public lands, these corridors are intended to facilitate long-distance movement of transmission and distribution of high-voltage electric power.[27] Finally, title 41 of the Fixing America's Surface Transportation Act (FAST–41) (Pub. L. 114–94, 42 U.S.C. 4370m *et seq.*), establishes a new

[15] Community of Interest means any community that has been historically marginalized, including, but not limited to, disadvantaged communities, fossil energy communities, rural communities, minority communities, indigenous peoples, or other geographically proximate communities that could be affected by a NIETC.

[16] Department of Energy American Indian Tribal Government Interactions and Policy—DOE Directives, Guidance, and Delegations.

[17] M–23–09 (*whitehouse.gov*).

[18] 631 F.3d 1072 (2011).

[19] 42 U.S.C. 4332(2)(C).

[20] See *The Wilderness Society, et al* v. *U.S. Department of Energy,* No. 08–71074 (9th Cir. 2011).

[21] Regulations for Filing Applications for Permits to Site Interstate Elec. Transmission Facilities, Order No. 689, 71 FR 69440 (Dec. 1, 2006), 117 FERC ¶ 61,202 (2006) (Order No. 689 Final Rule), reh'g denied, 119 FERC ¶ 61,154 (2007) (Order No. 689 Rehearing Order).

[22] The eleven reports are detailed in the online Code of Federal Regulations here: *https://www.ecfr.gov/current/title-18/chapter-I/subchapter-W/part-380/section-380.16*. Reports range from: (1) General Project Description; (2) Water Use and Quality; (3) Fish, Wildlife, and Vegetation; (4) Cultural Resources; (5) Socioeconomics; (6) Geological Resources; (7) Soils; (8) Land Use, Recreation, and Aesthetics; (9) Alternatives; (10) Reliability and Safety; and (11) Design and Engineering.

[23] Applications for Permits to Site Interstate Electric Transmission Facilities, 181 FERC ¶ 61,205 (2022) (Notice of Proposed Rulemaking).

[24] 42 U.S.C. 15926.

[25] 42 U.S.C. 15926(a) and DOE/EIS–0406.

[26] 42 U.S.C. 15926(d).

[27] Visit the West-wide Energy Corridor Information Center website *https://www.corridoreis.anl.gov/* to maps and learn about potential revisions, deletions, and additions to the network.

governance structure, set of procedures, and funding authorities to improve the Federal environmental review and authorization process for ''covered'' infrastructure projects. FAST–41 is administered by the Federal Permitting Improvement Steering Council (Permitting Council), which is comprised of the Permitting Council Chair, the Deputy Secretaries ''or equivalent'' of 13 Federal permitting agencies (including DOE), as well as the CEQ Chair and OMB Director. A sponsor of a project in an NIETC also may apply to become a FAST–41 covered project, which is entitled to the permitting timetable management, interagency coordination, transparency, and the other benefits of that statute. To apply for FAST–41 coverage, project sponsors should submit notice of the initiation of a proposed FAST–41 covered project (FIN) to the Permitting Council Executive Director at (*Fast.Fortyone@FPISC.gov*) and the appropriate facilitating agency.

III. Notice of Intent

A. Key Elements of Applicant-Driven, Route-Specific Designation Application Process

As first announced in the Building a Better Grid Initiative NOI and discussed previously, DOE intends to implement its authority to designate NIETCs on an applicant-driven, route-specific basis. DOE will issue future guidance establishing the process through which interested parties can propose designation of a NIETC, and the information they will be required to provide. In this NOI, DOE identifies certain key elements that DOE expects will be part of this application process, and in the RFI that follows, seeks comments on these and any other key program elements to inform the development of guidance for applications for NIETC designations.

i. Eligible Applicants

DOE expects Applicants for a potential NIETC designation to be transmission developers with a project under development in the proposed route. However, no particular stage of development is required for an Applicant to seek potential designation. DOE is also considering opening the pool of potential applicants to additional entities, which could include Tribal authorities, States, non-transmission-owning utilities (including transmission-dependent utilities), local governments, generation developers, or other entities with an interest in seeking designation of a NIETC.

ii. Scope of ''Route-Specific'' NIETCs

As discussed above, DOE intends to invite Applicants to propose routes where one or more potential transmission projects could be located within a geographic area where DOE has identified transmission need(s) (*i.e.,* present or expected electric transmission capacity constraints or congestion that adversely affects consumers), either through the Needs Study or through other evaluations provided by the Applicant. DOE anticipates that Applicants submitting potential routes for designation will be required to demonstrate that their proposed route balances the need to ensure that the potential route is defined with sufficient specificity to allow for meaningful evaluation of the potential energy and environmental impacts of one or more transmission projects along that route, while also sufficient in size and scope to construct, maintain, and safely operate one or more transmission projects in accordance with applicable regulatory requirements and reliability standards and accommodate routine route changes that often occur when siting and permitting infrastructure.

iii. Required Application Information

DOE intends to require Applicants to include in their proposal for NIETC designation information about the potential route that is necessary to fulfill the statutory requirements for NIETC designation detailed in section I.C of this notice, as well as certain environmental information about the potential route to facilitate DOE's ability to efficiently complete its responsibilities under NEPA. Specifically, DOE preliminarily expects to require Applicants to submit the following information:

(i) The geographic boundaries of potential route-specific corridor(s), and the rationale for those boundaries, including how they balance the need for specificity in the route with the need to ensure the scope and size are sufficient for operational purposes and to accommodate typical route changes;

(ii) A description of how the potential NIETC would address existing or expected future electric energy transmission capacity constraints or congestion that adversely affects consumers, including but not limited to areas of constraints or congestion identified in the Needs Study;

(iii) A description of how new or upgraded transmission capacity within the potential corridor would impact the criteria listed in FPA section 216(a)(4) that DOE may consider when making a designation, including information describing the impact such new or upgraded transmission capacity would have on: economic growth and vitality in the corridor or end markets served; energy independence, national defense, and national security; the achievement of national energy policy goals, including the development of low and zero carbon generation capacity resources; the ability to interconnect new firm or intermittent energy resources, and; reductions in electric energy costs for consumers;

(iv) Environmental information necessary to meet the requirements of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) (NEPA). If a proposed NIETC designation is based on a project that is under sufficient development such that the following information is available in specifics, those specifics should be provided. For proposed NIETC designations that are more conceptual, the information provided should be as specific as possible. The Affected Environmental Resources and Impacts Summary is limited to a maximum length of twenty (20), single-spaced pages, not including associated maps, and must include concise descriptions, based on existing, relevant, and reasonably-available information, of the known existing environment, and major site conditions in project area, including:

a. An overview of topographical and resource features that are relevant to the siting of electric transmission lines present;

b. Summary of known land uses, including Federal lands, Tribal lands, and State public lands of various types (*e.g.,* parks and monuments), associated land ownership, where appropriate, and any land use restrictions;

c. Summary of known or potential adverse effects to cultural and historic resources;

d. Summary of known or potential conflicts with or adverse impacts on military activities;

e. Summary of known or potential impacts on the U.S. aviation system, including FAA restricted airspace;

f. Summary of known or potential impacts on the U.S. marine transportation system, including impacts on waterways under jurisdiction of the U.S. Coast Guard;

g. Summary of known information about Federal- and State-protected avian, aquatic, and terrestrial species, and critical habitat or otherwise protected habitat, that may be present, as well as other biological resources information that is necessary for an environmental review;

h. Summary of the aquatic habitats (to include estuarine environments, and water bodies, including wetlands, as well as any known river crossings and potential constraints caused by impacts to navigable waters of the United States considered for the qualifying project);

i. Summary of known information about the presence of Communities of Interest as defined by DOE [28] that could be affected by the NIETC;

j. Identification of existing or proposed qualifying project facilities or operations in the project area;

k. Summary of the proposed use of previously disturbed lands, existing, agency-designated corridors, including but not limited to corridors designated under section 503 of the Federal Land Policy and Management Act and section 368 of the Energy Policy Act of 2005, transportation rights-of-way, and the feasibility for co-location of the qualifying project with existing facilities or location in existing corridors and transportation rights-of-way;

l. Summary of potential avoidance, minimization, and conservation measures; and

m. Maps and Geospatial Information and Studies in support of the information provided in the summary descriptions for the known existing environmental, cultural, and historic resources in the project area under paragraph in this section must be included. Project proponents must provide maps as electronic data files that may be readily accessed by Federal entities and Non-Federal entities.

(v) A discussion of existing or ongoing environmental review and documentation activities and participants within the potential route-specific NIETC. This includes an indication of the extent to which the potential NIETC could be made to align with existing rights-of-way, including utility rights-of-way, rail rights-of-way, highway rights-of-way, and multi-function energy corridors established on Federal lands under section 368 of EPAct 2005; [29]

(vi) A summary of engagements to date and future outreach planned with Communities of Interest;

(vii) To the extent the applicant is proposing a route for NIETC designation in association with a specific project, the status of the project's development, including:

a. Status of regulatory approvals;

b. Discussion of project inclusion in any local or regional transmission plans;

c. If the applicant has an intent to seek a federal permit under section 216(b), status of the applicant's initiation of or participation in the FERC pre-filing process;

d. The extent to which interconnection points have been identified, secured, and assessed;

e. A summary of engagements to date with potentially impacted landowners, including a summary of any acquired or expanded property rights or other agreements in place or in development;

f. Discussion of any co-location with existing infrastructure, rights-of-way, and corridors;

(viii) A discussion of whether planned or anticipated transmission project(s) within the potential NIETC would use innovative transmission technologies or combinations of technologies that would impact the size and scope of the proposed route (*e.g.,* advanced conductor technologies that would allow for more capacity in a smaller corridor); and

(ix) A discussion of the impact that potential transmission project(s) within the proposed NIETC would have on encouraging (1) collective bargaining and free and fair opportunities for workers to organize, (2) expanding quality job opportunities and training, (3) advancing diversity, equity, inclusion, and accessibility (DEIA), (4) achieving the DOE Justice40 Initiative policy priorities,[30] (5) maximizing the use of products and materials made in the United States, and (6) maintaining or improving energy security.

iv. Evaluation and Designation Process and Decision

Section 216(a)(2) requires the Secretary's decision to designate a NIETC to be issued in a Designation of National Interest Electric Transmission Corridors Report (''Designation Report''). DOE anticipates that, to reach a decision on an Applicant's proposal for designation of a NIETC and prepare a Designation Report, it will:

- Consider the results of the final 2023 National Transmission Needs Study;
- Evaluate proposals for consistency with the statutory requirements for corridor designation as described in section 216(a)(2) of the FPA;
- Provide an opportunity for comment by, as well as conduct required consultations with, Federal and Tribal Nations; State, local, and regional grid entities; and the general public, including transmission owners and users, grid operators, and others potentially impacted by the proposed designation;
- Evaluate the transmission needs that would be addressed by new or upgraded transmission capacity within the potential NIETC, and how those needs compare or relate to the needs identified in the Need Study and other additional factors as outlined section 216(a)(4) of the FPA, as amended by the IIJA;
- Evaluate the Applicant's demonstration of environmental impacts of such corridor designations under NEPA; and
- Evaluate the other considerations presented by the Applicant, including the considerations listed in section 216(a)(4) of the FPA.

Based on these considerations and evaluations, DOE anticipates that it would then issue a decision whether to designate a NIETC as proposed or not. With respect to NEPA reviews, to promote efficiency and timeliness DOE intends to coordinate to the maximum extent practicable with FERC in cases where an Applicant also intends to seek permits from FERC under section 216(b) of the FPA. As noted in the accompanying RFI, this may include requiring Applicants for designation of a NIETC to provide, to the extent practicable, environmental information at the same scope and level of detail and in the same general form as what FERC would require pursuant to its responsibilities. Documentation under NEPA would constitute the complete federal decision for the corridor designation with respect to environmental and cultural resources made and its rationale. DOE intends that any Designation Report issued would describe the considerations and factors weighed in making the decision.

IV. Request for Information

DOE seeks comments from all interested stakeholders regarding all of the proposed elements of DOE's anticipated approach to implementing an applicant-driven, route-specific NIETC designation process described in the NOI above.

Further, in keeping with the Administration's goals, and as an agency whose mission is to help strengthen our country's energy prosperity, the Department of Energy strongly supports investments that create and retain good-paying jobs with the free and fair choice to join a union, the incorporation of strong labor standards, and high-road workforce development, especially registered apprenticeship and quality pre-apprenticeship. Respondents to this RFI are encouraged to include information

[28] See footnote 15 for definition.

[29] 42 U.S.C. 15926.

[30] The eight DOE Justice40 Initiative policy priorities were identified by the DOE Office of Economic Impact and Diversity to guide DOE's implementation of Justice40. *https://www.energy.gov/diversity/justice40-initiative.*

about how the NIETC designation process can best support these goals.

In addition, DOE seeks comments on the following specific questions:

1. Please comment on the approach to NIETC designation discussed in the NOI. What are the potential positive and negative impacts of such an approach? How could this process, especially how applications for designation are structured, be altered or improved?

2. Please comment on the information DOE intends to request as part of an application in Section II.A.iii—are elements of these requests and/or supporting rationale overly burdensome on respondents?

3. Is there other information or types of information not listed in Section II.A.iii that should be requested to inform the evaluation and designation of NIETCs?

4. For any of the information listed in Section II.A.iii or suggested in response to the question above, what metrics and methods are available for evaluating how that information meets the statutory requirements for a NIETC described in Section I.C?

5. When considering the merits of corridor designation applications, how should DOE evaluate and weight the impact that a proposed corridor and any associated potential project(s) may have on:

a. Alleviating congestion or transmission capacity constraints and/or responding to concerns identified in the Needs Study,

b. Grid reliability and resilience,

c. Reducing greenhouse gas emissions,

d. Generating host community benefits,

e. Encouraging strong labor standards and the growth of union jobs and expanding career-track workforce development in various regions of the country,

f. Improving energy equity and achieving environmental justice goals,

g. Maximizing the use of products and materials made in the United States, and

h. Maintaining or improving energy security?

How should DOE evaluate eligible projects that include benefits that may vary across any of the above set of preferred impacts? To what extent should DOE consider other related outcomes like cumulative impacts from a potential corridor? What information should DOE seek to inform such considerations? What metrics and methods are available for conducting such evaluations?

6. Are there other potential Applicants beyond those listed in Section II.A.i that should be considered when developing final guidance, or whose specific needs should be considered when developing this process?

7. Should DOE accept proposals or recommendations for NIETCs on an annual basis, on some other defined frequency, or on a rolling basis? How long should defined request periods be open?

8. Should DOE explicitly seek NIETC corridor proposals that facilitate the development of certain kinds of transmission projects or that meet specific identified transmission needs (*e.g.,* interregional transmission projects)?

9. Should DOE create separate tracks for those applicants who are interested in backstop siting and financing versus those interested in only access to DOE commercial facilitation and finance tools? In your response, please address how the environmental review and other review processes—including with FERC, other federal agencies, and state regulatory bodies—might differ, the relative timing and urgency for siting corridors versus financing corridors, differences in when in the project development cycle an applicant may seek a financing or siting corridor, and conversion between corridor types.

10. To the extent practicable, DOE anticipates leading the coordination of NEPA reviews with other agencies to support their NEPA documentation and to streamline their responsibilities related to facility permitting as well as coordinating with any other Federal agency required to participate in NIETC designations. To support and facilitate environmental review, DOE anticipates requiring that proposed ''route-specific corridors'' include or are supported by, to the extent practicable, existing environmental data and analyses that any federal agency may require to complete its environmental review. In particular, where projects in NIETCs indicate an intention to seek siting permits from FERC under section 216(b) of the FPA, DOE anticipates that it will coordinate with FERC to avoid redundancy and promote efficiency in environmental reviews. Accordingly, DOE intends to request a scope and level of detail similar to what FERC would require pursuant to its responsibilities.

a. Please comment on the role of FERC in the corridor designation process. How can DOE and FERC coordinate to avoid redundancy and promote efficiency in environmental reviews regarding the DOE corridor designation and any potential FERC permit applications? Please be as specific as possible, including but not limited to how the timing of the corridor designations and permit applications restricts or facilitates coordination, and practicable approaches to implementation.

b. Is there additional information that DOE should request in its NIETC application beyond the information listed in Section II.A.iii? Is additional information beyond the information listed in Section II.A.iii, necessary to develop a record consistent with that which FERC would require to meet its responsibilities under section 216(b) and NEPA?

11. Are there other forms of outreach and/or consultation that should be included in this process to ensure adequate participation of and notice to Tribal authorities, State, local, the public, and appropriate regional authorities? For example, should regional planning entities or grid operators be included in outreach or consultation?

12. Are there post-designation procedures not discussed in this request that should be included?

Disclaimer

This is solely a request for information and is not a grant announcement. DOE is not accepting applications to this RFI, nor will DOE reimburse any of respondents' costs in preparing a response. DOE may or may not elect to issue a grant announcement in the future based on or related to the content and responses to this RFI. There is no guarantee that a grant announcement will be issued as a result of this RFI. Responding to this RFI does not provide any advantage or disadvantage to potential applicants if DOE chooses to issue a grant announcement regarding the subject matter. Any information obtained as a result of this RFI is intended to be used by the Government on a non-attribution basis for planning and strategy development; this RFI does not constitute a formal announcement for applications or abstracts. Your response to this notice will be treated as information only. DOE will review and consider all responses in its formulation of program strategies for the identified materials of interest that are the subject of this request. DOE will not provide reimbursement for costs incurred in responding to this RFI. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind DOE to any further actions related to these topics.

Evaluation and Administration by Federal and Non-Federal Personnel

Federal employees are subject to the non-disclosure requirements of a criminal statute, the Trade Secrets Act, 18 U.S.C. 1905. The Government may seek the advice of qualified non-Federal personnel. The Government may also use non-Federal personnel to conduct routine, nondiscretionary administrative activities. The respondents, by submitting their response, consent to DOE providing their response to non-Federal parties. Non-Federal parties given access to responses must be subject to an appropriate obligation of confidentiality prior to being given the access. Submissions may be reviewed by support contractors and private consultants.

Request for Information Response Guidelines

Responses to the RFI must be provided in writing and submitted electronically to *www.regulations.gov* no later than 5pm EST on June 29, 2023.

For ease of replying and to aid categorization of your responses, *please copy and paste the RFI questions, including the question numbering, and use them as a template for your response*. Respondents may answer as many or as few questions as they wish.

DOE will not respond to individual submissions. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs and grants and/or otherwise be made available to the public, respondents are strongly advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response. Responses containing confidential, proprietary, or privileged information must be conspicuously marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Federal Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

Consistent with 10 CFR 1004.11, any person submitting information that they believe to be confidential and exempt by law from public disclosure should submit via email to *NIETC@hq.doe.gov* two well marked copies: one copy of the document marked ''Confidential Commercial and Financial Information'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. The copy containing confidential commercial and financial information must include a cover sheet marked as follows: identifying the specific pages containing confidential, proprietary, or privileged information: ''Notice of Restriction on Disclosure and Use of Data: Pages [list applicable pages] of this response may contain confidential, commercial, or financial information that is exempt from public disclosure.'' The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source. In addition, (1) the header and footer of every page that contains confidential, proprietary, or privileged information must be marked as follows: ''Contains Confidential, Commercial, or Financial Information Exempt from Public Disclosure'' and (2) every line and paragraph containing proprietary, privileged, or trade secret information must be clearly marked with [[double brackets]] or highlighting.

Signing Authority

This document of the Department of Energy was signed on May 10, 2023, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by the 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 May 10, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–10321 Filed 5–12–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–87–000.
Applicants: SR Snipesville III, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of SR Snipesville III, LLC.
Filed Date: 5/8/23.
Accession Number: 20230508–5184.
Comment Date: 5 p.m. ET 5/30/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–149–000.
Applicants: Delta's Edge Lessee, LLC.
Description: Delta's Edge Lessee, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 5/8/23.
Accession Number: 20230508–5180.
Comment Date: 5 p.m. ET 5/30/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–65–000.
Applicants: AB CarVal Investors, L.P., Agilitas Energy, Inc.
Description: Petition for Declaratory Order of Agilitas Energy, Inc. and AB CarVal Investors, L.P.
Filed Date: 5/5/23.
Accession Number: 20230505–5262.
Comment Date: 5 p.m. ET 6/5/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2303–006; ER10–1246–020; ER10–1252–020; ER11–3987–019; ER11–4055–014; ER12–1566–018; ER12–2498–024; ER12–2499–024; ER13–764–024; ER14–1548–017; ER14–1775–012; ER14–1776–010; ER14–1927–012; ER15–2653–005; ER16–1325–007; ER16–1326–007; ER16–1327–007; ER17–382–009; ER17–383–009; ER17–384–009; ER17–2141–007; ER17–2142–007; ER18–855–008; ER18–1416–008; ER18–2305–005; ER18–2306–004; ER18–2308–005; ER18–2309–005; ER18–2310–005; ER18–2311–005; ER20–2671–006; ER21–425–005; ER21–848–005; ER23–139–003.
Applicants: Pleasant Hill Solar, LLC, Battle Mountain SP, LLC, Copper Mountain Solar 5, LLC, Water Strider Solar, LLC, SF Wind Enterprises, LLC, Rose Wind Holdings, LLC, Rose Creek Wind, LLC, K&K Wind Enterprises, LLC, Garwind, LLC, Bobilli BSS, LLC, CED Wistaria Solar, LLC, Panoche Valley Solar, LLC, Great Valley Solar 2, LLC, Great Valley Solar 1, LLC, CED Ducor Solar 3, LLC, CED Ducor Solar 2, LLC, CED Ducor Solar 1, LLC, Copper Mountain Solar 4, LLC, Mesquite Solar 3, LLC, Mesquite Solar 2, LLC, Campbell County Wind Farm, LLC, CED White River Solar 2, LLC, Broken Bow Wind II, LLC, SEP II, LLC, Copper Mountain Solar 3, LLC, CED White River Solar, LLC, Alpaugh North, LLC, Alpaugh 50, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 1, LLC, Mesquite Solar 1, LLC, RWE Clean Energy Solutions, Inc., RWE Clean Energy Wholesale Services, Inc, Adams Wind Farm, LLC.
Description: Notice of Change in Status of Adams Wind Farm, LLC, et al.
Filed Date: 5/4/23.
Accession Number: 20230504–5221.
Comment Date: 5 p.m. ET 5/25/23.

Docket Numbers: ER22–615–002.
Applicants: Prairie State Solar, LLC.
Description: Compliance filing: Compliance Filing Under ER22–615 to be effective 2/1/2022.
Filed Date: 5/9/23.
Accession Number: 20230509–5020.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER22–983–004.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Rev in Further Compliance w/ Order No. 2222 and Request for Ext of Comp Deadline to be effective 11/1/2026.
Filed Date: 5/9/23.
Accession Number: 20230509–5085.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER22–2471–000.
Applicants: Freeport McMoRan Copper & Gold Energy Services LLC.
Description: Supplement to July 21, 2022, Freeport-McMoRan Copper & Gold Energy Service's Request for Renewed Authorization to Undertake Affiliate Sales.
Filed Date: 5/8/23.
Accession Number: 20230508–5187.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1234–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment of Original WMPA, SA No. 6800; Queue No. AF2–325, Docket No. ER23–1234 to be effective 5/3/2023.
Filed Date: 5/9/23.
Accession Number: 20230509–5025.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1272–001.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Replacement Generation—Response to Deficiency Letter to be effective 6/1/2023.
Filed Date: 5/9/23.
Accession Number: 20230509–5039.
Comment Date: 5 p.m. ET 5/23/23.

Docket Numbers: ER23–1849–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, SA No. 6889; Queue No. AF1–227 and Cancellation of IISA, SA No. 6061 to be effective 4/6/2023.
Filed Date: 5/8/23.
Accession Number: 20230508–5141.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1850–000.
Applicants: Delta's Edge Lessee, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 5/9/2023.
Filed Date: 5/8/23.
Accession Number: 20230508–5144.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1851–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6917 and ICSA, SA No. 6918; Queue No. AD1–031 to be effective 7/8/2023.
Filed Date: 5/8/23.
Accession Number: 20230508–5159.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1853–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to WEIS Tariff to Clean-Up Use of Defined Terms to be effective 7/9/2023.
Filed Date: 5/9/23.
Accession Number: 20230509–5016.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1854–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2023–5–9 Grand Valley-Ute Hydro DWA 734 0.0.0 to be effective 6/1/2023.
Filed Date: 5/9/23.
Accession Number: 20230509–5022.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1855–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–05–09_SA 3391 Ameren IL-Maple Flats Solar Energy Center 3rd Rev GIA (J813) to be effective 4/25/2023.
Filed Date: 5/9/23.
Accession Number: 20230509–5040.
Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1856–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Exhibit B Administrative Filing to be effective 11/15/2010.

Filed Date: 5/9/23.

Accession Number: 20230509–5053.

Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1857–000.

Applicants: Antelope Valley BESS, LLC.

Description: Compliance filing: Notice of Succession to be effective 5/10/2023.

Filed Date: 5/9/23.

Accession Number: 20230509–5067.

Comment Date: 5 p.m. ET 5/30/23.

Docket Numbers: ER23–1858–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–05–09_SA 4054 MP–GRE T–L IA (Two Islands) to be effective 5/9/2023.

Filed Date: 5/9/23.

Accession Number: 20230509–5072.

Comment Date: 5 p.m. ET 5/30/23.

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 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: May 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10327 Filed 5–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1850–000]

Delta's Edge Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Delta's Edge Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 30, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10324 Filed 5–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–765–000.

Applicants: National Grid LNG, LLC.

Description: § 4(d) Rate Filing: 2023–05–08 Letter Agreements with Narragansett d/b/a Rhode Island Energy to be effective 12/31/9998.

Filed Date: 5/8/23.

Accession Number: 20230508–5146.

Comment Date: 5 p.m. ET 5/22/23.

Docket Numbers: RP23–766–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: OTRA Summer 2023—GTS Rate Amendment to be effective 5/1/2023.

Filed Date: 5/9/23.

Accession Number: 20230509–5051.

Comment Date: 5 p.m. ET 5/22/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 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: May 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10326 Filed 5–12–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1846–000]

Boomtown Solar Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Boomtown Solar Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 30, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: May 9, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–10325 Filed 5–12–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0312; FRL–7887–03–OAR]

Release of Volume 3 of the Integrated Review Plan in the Review of the Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about May 12, 2023, the Environmental Protection Agency (EPA) is making available to the public, Volume 3 of the *Integrated Review Plan for the Lead National Ambient Air Quality Standards* (IRP). The national ambient air quality standards (NAAQS) for lead (Pb) are set to protect the public health and the public welfare from Pb in ambient air. Volume 3 of the IRP is the planning document for quantitative analyses to be considered in the policy assessment (PA), including exposure and risk analyses.

DATES: Comments must be received on or before June 14, 2023.

ADDRESSES: You may send comments on Volume 3 of the IRP, identified by Docket ID No. EPA–HQ–OAR–2020–0312, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. The draft document described here will be available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards.* The documents will be accessible under ''Policy Assessments'' for the current review.

FOR FURTHER INFORMATION CONTACT: Dr. Deirdre L. Murphy, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code: C504–06, 109 T.W. Alexander Drive, P.O. Box 12055, NC 27711; telephone number: 919–541–0729; or email: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0312, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. Information About the Documents

Two sections of the Clean Air Act (CAA or the Act) govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under section 109 of the Act, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The Act additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).

Presently the EPA is reviewing the air quality criteria and NAAQS for Pb.[1] The documents announced in this notice have been developed as part of the integrated review plan (IRP) which is developed in the planning phase for the review. The document has been prepared by the EPA's Office of Air Quality Planning and Standards, within the Office of Air and Radiation. This document will be available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards,* accessible under ''Planning Documents'' for the current review.

The IRP for the current review of the lead NAAQS is comprised of three volumes. Volume 3 is the subject of this notice. This volume is the planning document for quantitative analyses to be considered in the policy assessment (PA), including exposure and risk analyses. Comments are solicited from the public on Volume 3, which will also be the subject of a consultation with the CASAC. The consultation was announced in a separate **Federal Register** notice (88 FR 17218, March 22, 2023).

Volumes 1 and 2 were released in March 2022. Volume 1 provides background information on the air quality criteria and standards for Pb and may serve as a reference by the public and the CASAC in their consideration of volumes 2 and 3. Volume 2 addresses the general approach for the review and planning for the integrated science assessment (ISA) and was the subject of a consultation with the CASAC in April 2022.

Comments on Volume 3 of the IRP should be submitted to the docket, as described above, by June 14, 2023. A separate **Federal Register** notice provided details about the CASAC consultation meeting and the process for participation in the CASAC consultation on Volume 3 (88 FR 17218, March 22, 2023). The EPA will consider the consultation comments from the CASAC and public comments on the IRP, Volume 3, in preparation of any quantitative exposure and risk analyses for the PA. Volume 1 of the IRP, already available on the EPA website, provides background or contextual and historical material for this NAAQS review. These documents do not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Erika Sasser,

Director, Health and Environmental Impacts Division.

[FR Doc. 2023–10313 Filed 5–12–23; 8:45 am]

BILLING CODE 6560–50–P

[1] The EPA's call for information for this review was issued on July 7, 2020 (85 FR 40641).

ENVIRONMENTAL PROTECTION AGENCY

[EPA R9–2022–01; FRL–10948–01–R9]

Notice of Proposed Administrative Settlement Agreement for Recovery of Response Costs at the Omega Chemical Corporation Superfund Site in Los Angeles County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment and opportunity for public meeting.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), and the Resource Conservation and Recovery Act (''RCRA''), notice is hereby given that the Environmental Protection Agency (''EPA''), has entered into a proposed settlement, embodied in an Administrative Settlement Agreement for Recovery of Response Costs (''Settlement Agreement''), with Powerine Oil Company and Lakeland Development Company. Under the Settlement Agreement, Powerine and Lakeland agree to pay a total of $150,000 to reimburse EPA for costs EPA has incurred at the Omega Chemical Corporation Superfund Site (''Omega'').

DATES: Comments must be received on or before June 14, 2023. A request for a public meeting must be made in writing before May 30, 2023.

ADDRESSES: Please contact Michael Massey at *massey.michael@epa.gov* or (415) 972–3034 to request a copy of the Settlement Agreement. Comments on the Settlement Agreement should be submitted in writing to Mr. Massey at *massey.michael@epa.gov.* Comments should reference the Omega Site and the EPA Docket Number for the Settlement Agreement, EPA R9–2022–01. If for any reason you are not able to submit a comment by email, please contact Mr. Massey at (415) 972–3043 to make alternative arrangements for submitting your comment. EPA will post its response to comments at *https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0903349,* EPA's web page for the Omega Site.

FOR FURTHER INFORMATION CONTACT: Michael Massey, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Email: *massey.michael@epa.gov;* Phone (415) 972–3034.

SUPPLEMENTARY INFORMATION: Notice of this proposed Settlement Agreement is made in accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), and section 7003(d) of RCRA, 42 U.S.C. 6973(d). The Settlement Agreement concerns costs incurred by EPA in connection with Omega, a CERCLA response action in Los Angeles County, California, where groundwater contamination has come to be located. Powerine and Lakeland, which agree to pay EPA a total of $150,000, are the only parties to the Settlement Agreement. EPA has collected costs from other responsible parties at Omega and intends further cost recovery from additional parties in the future; however, because EPA is not recovering one hundred percent of its past costs at this time, this Settlement Agreement represents a compromise of EPA's costs.

The settlement includes a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and section 7003 of RCRA, 42 U.S.C. 6973(d). Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area. EPA will consider all comments received on the Settlement Agreement in accordance with the **DATES** and **ADDRESSES** sections of this Notice and may modify or withdraw its consent to the Settlement Agreement if comments received disclose facts or considerations that indicate that the settlement is inappropriate, improper, or inadequate.

Dated: May 9, 2023.

Michael Montgomery,

Director, Superfund and Emergency Management Division, EPA Region 9.

[FR Doc. 2023–10272 Filed 5–12–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0340, OMB 3060–0489 and OMB 3060–0727; FR ID 140612]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 14, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0340.

Title: Section 73.51, Determining Operating Power.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 750 respondents; 834 responses.

Estimated Time per Response: 0.25 to 3.0 hours.

Frequency of Response: Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 440 hours.

Total Annual Cost: None.

Needs and Uses: When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power might be used on a temporary basis. 47 CFR 73.51(d) requires that a notation be made in the station log indicating the dates of commencement and termination of measurement using the indirect method of power determination. 47 CFR 73.51(e) requires that AM stations determining the antenna input power by the indirect method must determine the value F (efficiency factor) applicable to each mode of operation and must maintain a record thereof with a notation of its derivation. FCC staff use this information in field investigations to monitor licensees' compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. Station personnel use the value F (efficiency factor) in the event that measurement by the indirect method of power is necessary.

OMB Control Number: 3060–0489.

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 365 respondents; 365 responses.

Estimated Hours per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 365 hours.

Total Annual Cost: $1,331,250.

Needs and Uses: The information collection requirements contained in this collection are found under 47 CFR 73.37(d) which require an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. The information collection requirements under 47 CFR 73.37(f) require applicants seeking facilities modification that would result in spacing that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Control Number: 3060–0727.

Title: Section 73.213, Grandfathered Short-Spaced Stations.

Form Number(s): Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: 0.5 hours–0.83 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 20 hours.

Total Annual Costs: $3,750.

Needs and Uses: The information collection requirement contained in 47 CFR 73.213 requires licensees of grandfathered short-spaced FM stations seeking to modify or relocate their stations to provide a showing demonstrating that there is no increase in either the total predicted interference area or the associated population (caused or received) with respect to all grandfathered stations or increase the interference caused to any individual stations. Applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. In addition, licensees are required to serve a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused upon the licensee(s) of the affected short-spaced station(s). Commission staff uses the data to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–10254 Filed 5–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0865; FR ID 140616]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before June 14, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–0865.

Title: Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents and Responses: 84,048 respondents; 84,050 responses.

Estimated Time per Response: .166 hours (10 minutes)—4 hours.

Frequency of Response: Recordkeeping and third-party disclosure requirements; on occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154(i) and 309(j).

Total Annual Burden: 116,306 hours.

Annual Cost Burden: No cost.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as an extension after this 60-day comment period to obtain the full three-year clearance from them.

The purpose of this information collection is to continually streamline and simplify processes for wireless applicants and licensees, who previously used a myriad of forms for various wireless services and types of requests, in order to provide the Commission information that has been collected in separate databases, each for a different group of services. Such processes have resulted in unreliable reporting, duplicate filings for the same

licensees/applicants, and higher cost burdens to licensees/applicants. By streamlining the Universal Licensing System (ULS), the Commission eliminates the filing of duplicative applications for wireless carriers; increases the accuracy and reliability of licensing information; and enables all wireless applicants and licensees to file all licensing-related applications and other filings electronically, thus increasing the speed and efficiency of the application process. The ULS also benefits wireless applicants/licensees by reducing the cost of preparing applications, and speeds up the licensing process in that the Commission can introduce new entrants more quickly into this already competitive industry. Finally, ULS enhances the availability of licensing information to the public, which has access to all publicly available wireless licensing information on-line, including maps depicting a licensee's geographic service area.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–10253 Filed 5–12–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of an Open Meeting of the FDIC Advisory Committee on Community Banking

AGENCY: Federal Deposit Insurance Corporation.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve. The meeting is open to the public. The public's means to observe this meeting of the Advisory Committee on Community Banking will be both in-person and via a Webcast live on the internet. In addition, the meeting will be recorded and subsequently made available on-demand approximately two weeks after the event. To view the live event, visit *http://fdic.windrosemedia.com.*

DATES: Thursday, June 1, 2023, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC building located at 550 17th Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Debra A. Decker, Committee Management Officer of the FDIC at (202) 898–8748.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of issues of interest to community banks. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should email *InterpreterDC@fdic.gov* at least two days before the meeting to make the necessary arrangements. If you require a reasonable accommodation to participate, please email *ReasonableAccommodationRequests@fdic.gov* to make necessary arrangements. To view the recording, visit *http://fdic.windrosemedia.com/index.php?category=Community+Banking+Advisory+Committee.* Written statements may be filed with the Advisory Committee before or after the meeting.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on May 10, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–10338 Filed 5–12–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, May 18, 2023 at 10:30 p.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th Floor) and virtual.

Note: For those attending the meeting in person, current Covid–19 safety protocols for visitors, which are based on the CDC Covid–19 community level in Washington, DC, will be updated on the Commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the Covid–19 community level and corresponding health and safety procedures. To access the meeting virtually, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED: Interim final rule amending 11 CFR 110.4(b)(1)(iii) regarding contributions in the name of another management and administrative matters.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–10368 Filed 5–11–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Procurement Solicitation Package (FR 1400; OMB No. 7100–0180).

DATES: Comments must be submitted on or before July 14, 2023.

ADDRESSES: You may submit comments, identified by FR 1400, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback,

Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Procurement Solicitation Package.

Collection identifier: FR 1400.

OMB Control Number: 7100–0180.

General Description of Collection: The Board uses the Procurement Solicitation Package, which includes a supplier database and solicitation documents as appropriate, to assist in the competitive process of soliciting proposals from suppliers of goods and services. The Procurement Solicitation Package includes the: Supplier Registration System (FR 1400A), Solicitation Package (Solicitation, Offer, and Award Form; Supplier Information Form; Past Performance Data Sheet; and Past Performance Questionnaire) (FR 1400B), Supplier Risk Management Offeror Questionnaire (FR 1400C), and Subcontracting Report (FR 1400D).

The solicitation documents are typically for the procurement of goods, services and construction that are not off-the-shelf items. The Board's supplier database serves as a venue for Board staff to research potential suppliers and their qualifications. When a solicitation is constructed for a specific acquisition, the solicitation package is typically called a Solicitation, Offer, and Award (SOA) document, which consists of the Solicitation Form (Section A of the SOA) and Supplier Information Form (Section N of the SOA), which are both part of FR 1400B. Depending on the requirements of the specific acquisition, the SOA may also consist of a Past Performance Data Sheet (part of FR 1400B), Past Performance Questionnaire (part of FR 1400B), Supplier Risk Management Offeror Questionnaire (FR 1400C), or Subcontracting Report (FR 1400D). This information collection is required to collect data on prices, specifications of goods and services, and qualifications of prospective suppliers.

Proposed revisions: The Board proposes to revise the FR 1400 by transitioning the FR 1400B into the new online source to settle system provided by Coupa, making minor revisions to the content to help improve reporting and reduce commonly asked follow-up questions, and adding a new section to the SOA, which respondents will be required to complete and then update or re-certify each year. This information would be required for every supplier when they complete a solicitation. Additionally, on an annual basis, suppliers would be required to login to Coupa to update or re-certify that representation information they originally entered in the ''Board of Governors Policy Information'' section is still correct. The FR 1400C and FR 1400D would also be transitioned to the Coupa system; however, the contents and format of the FR 1400C and FR 1400D would not change. There are no revisions being proposed to the FR 1400A.

Frequency: Event-generated.

Respondents: Businesses and individuals.

Total estimated number of respondents: 630.

Total estimated change in burden: 33.

Total estimated annual burden hours: 24,863.[1]

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB

Continued

Board of Governors of the Federal Reserve System, May 9, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–10257 Filed 5–12–23; 8:45 am]

BILLING CODE 6210–01–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 30, 2023.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. *Comments can also be sent electronically to MA@mpls.frb.org:*

1. *The Gary W. Paulson and Lyla G. Paulson Revocable Living Trust u/a dated 10/25/2018, Gary W. Paulson and Lyla G. Paulson, as co-trustees, all of Park River, North Dakota;* as a group acting in concert, to acquire voting shares of First Holding Company of Park River, Inc., and thereby indirectly acquire voting shares of First United Bank, both of Park River, North Dakota. Co-trustee Gary W. Paulson was previously permitted to acquire the shares in their individual capacity.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–10319 Filed 5–12–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to implement the Ad Hoc Clearance for Board-Wide Use (FR 3100; OMB No. 7100–NEW).

DATES: Comments must be submitted on or before July 14, 2023.

ADDRESSES: You may submit comments, identified by FR 3100, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

Supporting Statement by referencing the collection identifier, FR 1400.

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Implement the Following Information Collection

Collection title: Ad Hoc Clearance for Board-Wide Use.

Collection identifier: FR 3100.

OMB control number: 7100–NEW.

General description of collection: Information under this ad hoc information collection would be collected from Board-regulated entities, other stakeholders, and the public (collectively, respondents) through to-be-defined surveys, interviews and focus groups, and other similar activities about a variety of financial service-related topics and the Board's operations. The clearance would help the Board understand respondents' perspectives, experiences, and expectations regarding the financial system and Board operations and would be used to inform the Board's initiatives to promote financial system stability, supervise and regulate financial institutions and financial activities, and promote consumer protection and community development.

Frequency: As needed.

Respondents: Individuals, institutions, state and local governments, and other persons of interest to the Board.

Total estimated number of respondents: 850.

Total estimated annual burden hours: 17,000.[1]

Board of Governors of the Federal Reserve System, May 9, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–10255 Filed 5–12–23; 8:45 am]

BILLING CODE 6210–01–P

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 3100.

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Compensation and Salary Surveys (FR 29; OMB No. 7100–0290).

DATES: Comments must be submitted on or before July 14, 2023.

ADDRESSES: You may submit comments, identified by FR 29, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Compensation and Salary Surveys.

Collection identifier: FR 29.

OMB control number: 7100–0290.

General description of collection: This family of surveys is currently comprised of the (1) Compensation and Salary Survey (FR 29a) and (2) Ad Hoc Surveys (FR 29b). The FR 29a is collected annually and the FR 29b is collected on an as needed basis, not more frequently than five times per year. These surveys collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors of the Board. The data from the surveys primarily are used to determine the appropriate salary structure and salary adjustments for Board employees.

Proposed revisions: The Board proposes to revise the FR 29 to no longer include the FR 29a, as it was determined not to be subject to the PRA.

Frequency: Event generated.

Respondents: Employers considered competitors for Board employees.

Total estimated number of respondents: 10.

Total estimated change in burden: (210).

Total estimated annual burden hours: 50.[1]

Board of Governors of the Federal Reserve System, May 9, 2023.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–10256 Filed 5–12–23; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: May 23, 2023 at 10 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 118 124 777#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjQ4ZjhiNmEtN2FhNC00OTJjLWIwNDItNTA0NzA5ZGEyODA3%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the April 25, 2023 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
   (c) Investment Report
3. Quarterly Reports
   (d) Metrics
4. OPE Annual Presentation

Authority: 5 U.S.C. 552b(e)(1).

Dated: May 10, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–10335 Filed 5–12–23; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–Q–2023–02; Docket No. 2023–0002; Sequence No. 13]

Federal Secure Cloud Advisory Committee; Notification of Upcoming Meeting

AGENCY: Federal Acquisition Service (Q), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), GSA is hereby giving notice of an open public meeting of the Federal Secure Cloud Advisory Committee (FSCAC). Information on attending and providing public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The open public meeting will be held on Thursday, May 25, 2023, from 9:30 a.m. to 4 p.m., EST. The agenda for the meeting will be made available prior to the meeting online at *https://gsa.gov/fscac.*

ADDRESSES: Ronald Reagan Building, The Polaris Suite, 1300 Pennsylvania Avenue NW, Washington, DC 20004. The meeting will also have a virtual attendance option.

FOR FURTHER INFORMATION CONTACT: Zach Baldwin, Designated Federal Officer (DFO), FSCAC, GSA, 202–536–8216, *fscac@gsa.gov.* Additional information about the Committee, including meeting materials and agendas, will be available online at *https://gsa.gov/fscac.*

SUPPLEMENTARY INFORMATION:

Background

GSA, in compliance with the FedRAMP Authorization Act of 2022, established the FSCAC, a statutory advisory committee in accordance with the provisions of FACA (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities. The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers.
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
  - Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.
- Collect information and feedback on agency compliance with, and implementation of, FedRAMP requirements.

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 29.

• Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The FSCAC will meet no fewer than three (3) times a calendar year. Meetings shall occur as frequently as needed, called, and approved by the DFO.

Purpose of the Meeting and Agenda

The May 25, 2023 inaugural public meeting will be dedicated to the FSCAC determining the Committee's first course of action through a series of presentations and facilitated discussions reviewing current state and examining top priorities for the secure adoption of cloud computing technologies in the Federal Government. The meeting agenda will be posted on *https://gsa.gov/fscac* prior to the meeting.

Meeting Attendance

This meeting is open to the public and can be attended in-person or virtually. Meeting registration and information is available at *https://gsa.gov/fscac.* Registration for attending the meeting in person is highly encouraged by 5 p.m. on Monday, May 22, 2023 for easier building access. In-person public attendance is limited to the available space, and seating is available on a first come, first serve basis. If you plan to attend virtually, you will need to register by 5 p.m. on Monday, May 22, 2023 to obtain the virtual meeting information. After registration, individuals will receive meeting attendance information via email.

For information on services for individuals with disabilities, or to request accommodation for a disability, please email the FSCAC staff at *FSCAC@gsa.gov* at least 10 days prior to the meeting. Live captioning may be provided virtually, and ASL interpreters may be present onsite.

Public Comment

Members of the public will have the opportunity to provide oral public comment during the FSCAC meeting by indicating their preference when registering. Written public comments can be submitted at any time by completing the public comment form on our website, *https://gsa.gov/fscac.* All written public comments received prior to Wednesday, May 17, 2023, will be provided to FSCAC members in advance of the meeting.

Pursuant to 41 CFR 102–3.150(b), the **Federal Register** notice for this meeting is being published fewer than 15 calendar days prior to the meeting due to unforeseen administrative difficulties.

Elizabeth Blake,

Senior Advisor, Federal Acquisition Service, General Services Administration.

[FR Doc. 2023–10232 Filed 5–12–23; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2023–01; Docket No. 2023–0002; Sequence No. 1]

Clarifying the Process for Meeting Federal Space Needs

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FMR C–2023–01, clarifying the process for meeting Federal space needs.

SUMMARY: This Federal Management Regulation (FMR) bulletin clarifies certain terms and concepts in part 102–83, Location of Space, to reflect current laws, executive orders (E.O.s), and Office of Management and Budget (OMB) bulletins and management procedure memoranda, thereby bringing Federal location policy into compliance with those governing authorities, particularly the E.O. on ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.''

DATES: *Applicability Date:* May 15, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, GSA Office of Government-wide Policy, at 202–208–2956, or email *realpropertypolicy@gsa.gov.* Please cite FMR Bulletin C–2023–01.

SUPPLEMENTARY INFORMATION:

Background

GSA Bulletin FMR C–2023–01 revokes U.S. General Services Administration (GSA) Bulletin FMR B–52 (B–52) in its entirety but retains previous clarifications from B–52 of certain other terms and concepts in part 102–83 of the Federal Management Regulation (FMR), ''Location of Space,'' to reflect current laws, executive orders (E.O.) and Office of Management and Budget (OMB) bulletins and management procedure memoranda. This bulletin brings federal location policy into compliance with current governing authorities, including E.O. 14091 of February 16, 2023, ''Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.''

Among other things, E.O. 14091 revoked E.O. 13946 of August 24, 2020, ''Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations,'' including the amendments it made to E.O. 12072 and E.O. 13006. In accordance with E.O. 14091, GSA is hereby revoking B–52 to remove all previous references to ''Opportunity Zones,'' ''other distressed areas,'' and other terms referenced in E.O. 13946.

FMR Bulletin C–2023–01 is available at *https://www.gsa.gov/policy-regulations/regulations/federal-management-regulation/federal-management-regulation-fmr-related-files#RealPropertyManagement.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2023–10336 Filed 5–12–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

National Center for State, Tribal, Local, and Territorial Public Health Infrastructure and Workforce, CDC and ATSDR Tribal Consultation Session

AGENCY: Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce a CDC and ATSDR Tribal Consultation. CDC and ATSDR will host a virtual tribal consultation with American Indian and Alaska Native (AI/AN) Federally Recognized Tribes. The proceedings will be open to the public.

DATES: The tribal consultation will be held on July 12, 2023, from 2 p.m. to 3:30 p.m., EDT. Written tribal testimony is due by 5 p.m., EDT, on July 24, 2023.

ADDRESSES: Virtually through Zoom. To register, go to *https://cdc.zoomgov.com/j/1610090031?pwd=V1VCa1lZR3BRVWFab1lNUEFWQUl2UT09.* All elected tribal officials or their authorized representatives of federally

recognized AI/AN tribes are encouraged to submit written tribal testimony to the contact person and mailing address listed below or by email at *Tribalsupport@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Latonya Tripp-Dinkins, DBH, LPC, National Center for Injury Prevention Control, Centers for Disease Control and Prevention, 4770 Buford Highway, Chamblee, Georgia 30341–3717. Telephone: (404) 956–2782; Email: *violenceprevention@cdc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being held in accordance with Presidential Executive Order No. 13175 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments, and the Presidential Memoranda of January 26, 2021, November 5, 2009, September 23, 2004, and April 29, 1994, and the Centers for Disease Control and Prevention (CDC)/Agency for Toxic Substances and Disease Registry (ATSDR) Tribal Consultation Policy (*https://www.cdc.gov/tribal/consultation-support/tribal-consultation/policy.html*).

Purpose: The purpose of the consultation meeting is to advance CDC and ATSDR support for and collaboration with American Indian and Alaska Native (AI/AN) tribal nations and to improve the health of AI/AN people by pursuing goals that include assisting in eliminating health disparities faced by tribal nations; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of AI/AN people; and promoting health equity for all AI/AN people and communities. To advance these goals, CDC and ATSDR conduct government-to-government consultations with elected tribal officials of federally recognized AI/AN tribes or their authorized representatives. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information among parties that leads to mutual understanding and informed decision-making on behalf of the federal government.

Matters to be Considered: CDC and ATSDR are hosting this meeting to hold consultation with federally recognized AI/AN tribes to receive input and guidance to inform sexual violence prevention activities and strategies in developing Notices of Funding Opportunity (NOFOs). CDC and ATSDR are seeking feedback on how the agencies can better engage with Indian Country through meaningful consultation and on how the agency can ensure that a NOFO from CDC's Rape Prevention and Education (RPE) program is sensitive to the needs and concerns of tribal communities and is as effective as possible regarding the prevention of sexual violence, as well as on how the agency can better support tribes and tribal communities moving forward regarding health inequities related to RPE and injury prevention. The tribal consultation meeting is intended to provide interested parties with an opportunity to discuss their public health priorities and concerns related to RPE that may affect tribal nations.

The RPE program was authorized through the Violence Against Women Act, which was passed by Congress in 1994, and was most recently reauthorized in 2022. Grants awarded under this program are to be used for RPE programs conducted by state and territorial health departments and sexual assault coalitions, including tribal sexual assault coalitions. Additional information about the RPE program can be found at *https://www.cdc.gov/violenceprevention/sexualviolence/rpe/index.html.*

Elected tribal officials can find guidance to assist in developing tribal testimony for CDC and ATSDR at *https://www.cdc.gov/tribal/documents/consultation/Tribal-Testimony-Guidance.pdf.* Please submit tribal testimony on official tribal letterhead.

Based on the number of elected tribal officials giving testimony and the time available, it may be necessary to limit the time for each presenter. We will adjourn tribal consultation meetings early if all attendees who requested to provide oral testimony in advance of and during the consultation have delivered their comments. Agenda items are subject to change as priorities dictate.

Additional information about CDC/ATSDR's Tribal Consultation Policy can be found at *https://www.cdc.gov/tribal/consultation-support/tribal-consultation/policy.html.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–10275 Filed 5–12–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–416]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Participation Report; *Use:* The collected baseline data is used to assess the effectiveness of state early and periodic screening, diagnostic and treatment (EPSDT) programs in reaching eligible children (by age group and basis of Medicaid eligibility) who are provided initial and periodic child health screening services, referred for corrective treatment, and receiving dental, hearing, and vision services. This assessment is coupled with the state's results in attaining the participation goals set for the state. The information gathered from this report, permits federal and state managers to evaluate the effectiveness of the EPSDT law on the basic aspects of the program. *Form Number:* CMS–416 (OMB control number 0938–0354); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,512. (For policy questions regarding this collection contact Mary Beth Hance at 410–786–4299.)

Dated: May 10, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–10340 Filed 5–12–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; National Survey of Child and Adolescent Well-Being-Third Cohort (NSCAW III) (Office of Management and Budget #0970–0202)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE) within the Administration for Children and Families (ACF) is proposing an extension with revisions to the data collection activities conducted as part of the National Survey of Child and Adolescent Well-Being (NSCAW III) (Office of Management and Budget #0970–0202). NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. This request will allow additional time to conduct participant data collections. Minor changes to the instruments are requested to restore an in-person data collection option.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: NSCAW is the only source of nationally representative, longitudinal, firsthand information about the functioning and well-being, service needs, and service utilization of children and families who come to the attention of the child welfare system. The first and second cohorts of NSCAW were initiated in 1999 and 2008, respectively. A major objective for the third cohort of NSCAW (NSCAW III) is to maintain the strengths of previous work, while better positioning the study to address the changing child welfare population. Phase I of NSCAW III, approved November 2016, is complete and included recruitment and sampling process data collection activities. Phase II of NSCAW III, approved July 2017, includes baseline and follow-up data collection activities, and panel maintenance activities. Phase II follow-up data collection and panel maintenance is still ongoing. Phase III of NSCAW III, approved in September 2020, includes data collection on the child welfare workforce in of participating agencies. Phase III data collection is complete, and analysis of the data is ongoing.

We seek approval for an extension with changes for the currently approved data collection activities, which includes follow-up data collection for Phase II and panel maintenance activities with NSCAW cohort members. As part of this request we are also proposing minor changes to the Phase II information collection. Due to the COVID–19 pandemic, baseline Phase II in-person baseline data collection was paused for 14 months, and follow-up data collection was delayed due to the need to retool data collection procedures and instruments to allow for remote administration. This request is to extend the Phase II information collection and to update materials to restore the previously approved in-person mode as an option for caregiver and child respondents.

Respondents: Children and caregivers enrolled in NSCAW III and child welfare agency personnel in participating NSCAW III agencies. Surveys and panel maintenance responses may be obtained by telephone, web, or in person.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Child Follow-up	387	1	.75	290	97
Caregiver Follow-up	409	1	.75	307	102
Caseworker Follow-up	126	3	1.0	379	126
Panel Maintenance with NSCAW Cohort Members	4,723	1	.08	378	126

Estimated Total Annual Burden Hours: 451.

Comments: The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 628b; Continuing Appropriations Act of 2022.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10245 Filed 5–12–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Delegation of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Delegation of authorities are being redelegated from the Deputy Assistant Secretary, Office of Planning, Research and Evaluation (OPRE), Administration for Children and Families (ACF), to the Chief Technology Officer, Office of the Chief Technology Officer (CTO/ACF Tech), ACF. This action is necessary to complete the transition of the function of multi-program advance planning documents to the CTO/ACF Tech.

FOR FURTHER INFORMATION CONTACT: Kevin Duvall, Chief Technology Officer, Administration for Children and Families at (202) 401–5680.

SUPPLEMENTARY INFORMATION: The delegation of authorities for 45 CFR 95 subpart F are being redelegated consistent with the Statement of Organization, Functions, and Delegations of Authority as last amended, 87 FR 67693, November 8, 2022. Under the authority vested in the Assistant Secretary for Children and Families by memorandum from the Secretary, ''Delegation of Authority to Approve State System Requests for Federal Financial Participation for the Costs of Automatic Data Processing Equipment and Services,'' dated May 31, 1988, notice is hereby given that the Assistant Secretary for Children and Families has delegated to the ACF CTO the authorities under 45 CFR 95.611(a)(4), and as amended hereafter, to allow for the continued efficient operation of this approval function after it is transitioned from OPRE to the CTO/ACF Tech consistent with the CTO's reorganization.

Notice is hereby given that the CTO, and his or her successors, are granted the following authorities vested in the Secretary of Health and Human Services under 45 CFR 95.611(a)(4) by the memorandum dated November 9, 2017, that generally pertains to approval of Federal financial participation for the costs of automated data processing affecting multiple programs administered by ACF and the Centers for Medicare & Medicaid Services (CMS).

This delegation of authority applies to the following approval for multi-program state requests for federal financial participation for the costs of automated data processing equipment and services:

1. Requests related to programs under titles IV–B, IV–D, and IV–E of the Social Security Act (SSA), administered by ACF; and

2. Requests related to programs under titles XIX and XXI of the Social Security Act, administered by CMS, when submitted in combination with one or more of the programs under titles IV–B, IV–D, and IV–E of the SSA.

This authority may be redelegated. These authorities shall be exercised in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary. Notice is hereby given that Assistant Secretary January Contreras has affirmed and ratified any actions taken by the CTO of ACF, or his or her subordinates that involved the exercise of the authorities delegated herein prior to the effective date of this delegation. This delegation supersedes all existing delegations of these authorities. This delegation is effective immediately.

January Contreras,

Assistant Secretary for Children and Families.

[FR Doc. 2023–10291 Filed 5–12–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Chafee Strengthening Outcomes for Transition to Adulthood Project Overarching Generic (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families' (ACF) Office of Planning, Research, and Evaluation (OPRE) requests Office of Management and Budget (OMB) approval for an overarching generic clearance to collect data on programs serving youth transitioning out of foster care as part of the Chafee Strengthening Outcomes for Transition to Adulthood (Chafee SOTA) Project. The generic mechanism will allow ACF to conduct rapid-cycle evaluations that would not otherwise be feasible under the timelines associated

with the Paperwork Reduction Act of 1995. The purpose of the data collections submitted under the generic will be to inform ACF programming by building the evidence about what works to improve outcomes for the target population and to identify innovative learning methods that address common evaluation challenges.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the PRA, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Under the proposed umbrella generic, OPRE intends to conduct evaluations of the effectiveness of program services and components in improving outcomes for youth and young adults transitioning out of foster care. To address challenges identified in previous studies, the proposed evaluations will use innovative methods tailored to each participating program, including rapid cycle learning techniques that require an iterative approach. Due to the rapid and iterative nature of this work, OPRE is seeking approval for a generic clearance to conduct this research. Intended use of the resulting data is to identify practices and program components that have the potential to improve the delivery and/or quality of services administered by human service programs and agencies in the areas of child welfare and independent living services for youth and young adults with foster care experience. Potential data collection efforts include conducting interviews, focus groups, and surveys with program directors (*e.g.,* from programs serving youth with foster care experience and from their partner agencies) and current, past, or potential participants in programs serving youth with foster care experience (*e.g.,* including potential participants who are included in comparison groups), as well as extracting administrative or other program data.

Under this generic clearance, information is meant to inform ACF activities and may be incorporated into documents or presentations that are made public such as through conference presentations, websites, or social media. The following are some examples of ways in which we may share information resulting from these data collections: technical assistance (TA) plans, webinars, presentations, infographics, issue briefs/reports, project specific reports, or other documents relevant to the field, such as federal leadership and staff, grantees, local implementing agencies, researchers, and/or training/TA providers. We may also request information for the sole purpose of publication in cases where we are working to create a single source for users (clients, programs, researchers) to find information about resources such as services in their area, TA materials, different types of programs or systems available, or research using ACF data. In sharing findings, we will describe the study methods and limitations regarding generalizability and as a basis for policy.

Following standard OMB requirements, OPRE will submit an individual request for each specific data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents.

Respondents: Staff and administrators of programs serving youth and young adults with foster care experience; current, former, or potential participants in programs serving youth; and young adults with foster care experience.

BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avgerage burden per response (in hours)	Total burden (in hours)
Administrator Interviews	40	4	1.00	160
Staff Discussions and Focus Groups	80	4	1.50	480
Youth Discussions and Focus Groups	160	4	1.50	960
Youth Surveys	1,800	3	0.50	2,700
Administrative Data Extraction	10	4	4.00	160
Document Delivery	10	4	1.00	40

Estimated Total Burden Hours: 4,500.

Comments: The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Title IV–E of the Social Security Act, IV–E 477(g)(1–2), as amended by the Foster Care Independence Act of 1999.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10240 Filed 5–12–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Building and Sustaining the Child Care and Early Education Workforce (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; United States Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Planning, Research, and Evaluation (OPRE) at the U.S. Department of Health and Human Services is proposing to collect information to examine a promising strategy to support the child care and early education (CCEE) workforce in Colorado as part of the Building and Sustaining the Child Care and Early Education Workforce (BASE) project. This project aims to build evidence about workforce development strategies designed to promote, retain, and advance the CCEE workforce by improving the economic well-being of CCEE workers.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: As part of the BASE project, OPRE is evaluating the implementation, impacts, and costs of two initiatives designed to improve the wages and economic well-being of the CCEE workforce in Colorado. Colorado Department of Early Childhood (CDEC) is implementing two initiatives to improve the compensation and economic well-being of the CCEE workforce: (1) eligible CCEE center-based settings are randomly selected through a lottery process, and (2) eligible home-based CCEE settings receive additional funding and supports. OPRE proposes to collect survey, interview, and cost data to understand: (a) the implementation and costs of the initiatives, (b) the effects of the initiative for teachers in center-based CCEE settings, and (c) the experiences of directors and teachers in center-based CCEE settings and owners and caregivers in home-based CCEE settings with the initiatives. The study will include CCEE workers who are offered the initiatives and those who are not, as assigned through CDEC's lottery, and key informants who are involved in the design and implementation of CDEC's initiatives. The effectiveness of the initiative will be determined by differences between members of the intervention and control groups for hypothesized outcomes in center-based CCEE settings. The experiences of directors/owners, teachers, and caregivers in center-based and home-based CCEE settings with the initiatives will be explored with qualitative and descriptive analyses. OPRE and Colorado are collaborating to evaluate the two initiatives. Colorado will collect baseline survey data and share it with OPRE. OPRE will collect follow-up surveys and interviews. Study participants will complete follow-up surveys approximately 9 and 18 months after the initiatives begin to understand how strategies that aim to improve compensation might improve outcomes such as workforce recruitment, retention, and economic and psychological well-being, as well as to capture contextual information about CCEE settings' working conditions and job demands and supports. Interviews will be conducted approximately 6 to 9 months after the initiatives began with center-based teachers/home-based caregivers and center-based directors/home-based owners to capture their experiences with the initiatives, perceptions, attitudes, beliefs about the initiatives, and how these experiences may shape the viability and implementation of the initiatives. Interviews with key informants at state-level implementing agencies will collect qualitative data to understand contextual factors and the impetus behind the design and implementation of the initiatives. Finally, cost workbooks completed by center-based CCEE setting administrators will collect cost data to assess the costs associated with implementing the initiative. This information collection will support ACF and the CCEE field in understanding whether workforce support strategies that increase compensation affect the retention and well-being of the CCEE workforce. This information will help to inform Federal, State, and local initiatives to build and retain a qualified CCEE workforce.

Respondents: CCEE center-based directors, administrators, teachers; CCEE home-based owners and caregivers; CCEE key informants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
1. Follow-up center director survey	75	2	0.75	113	38
2. Follow-up lead and assistant teacher survey	1,000	2	0.75	1,500	500
3. Follow-up home-based owner and caregiver survey	95	2	0.75	143	48
4. One-on-one center director interview	15	1	1	15	5
5. One-on-one lead and assistant teacher interview	25	1	1	25	8
6. One-on-one home-based owner and caregiver interview	25	2	1	38	13
7. One-on-one key informant interview	5	1	1	5	2
8. Center-based setting costs workbook	16	1	5	80	27

Estimated Total Annual Burden Hours: 641.

Comments: The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Head Start Act section 640 [42 U.S.C. 9835] and 649 [42 U.S.C. 9844]; appropriated by the Consolidated Appropriations Act of 2022. Head Start Act as amended by the Improving Head

Start for School Readiness Act of 2007 (IHSSRA) (Public Law 110 134).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–10278 Filed 5–12–23; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; of the ACL Generic Clearance for the Collection of Qualitative Research and Assessment OMB Control Number 0985–NEW

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the ACL Generic Clearance for the Collection of Qualitative Research and Assessment OMB Control Number 0985–NEW.

DATES: Submit written comments on the collection of information by June 14, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Delaney Roach, Call 202–795–7316 or Email *evaluation@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

The Administration for Community Living (ACL) at the Department of Health and Human Services (HHS) is requesting a generic clearance for purposes of conducting qualitative research to gain a better understanding of emerging issues related to ACL's grantees, service providers, and programs; develop future intramural and extramural research projects; and to ensure HHS and ACL leadership, programs, and staff can obtain timely and relevant data and information.

ACL defines qualitative feedback as information that provides useful insights on perceptions and opinions but are not statistical surveys that yield results that can be generalized beyond the population of study. ACL is requesting approval for at least four types of qualitative research: (a) Interviews, (b) focus groups, (c) questionnaires, and (d) other qualitative methods.

ACL's mission is to maximize the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. ACL implements critical disability and aging programs, serves as the advisor to the HHS Secretary on disability and aging programs, works with other HHS agencies, Departments and the White House on disability and aging policies, and engages a range of disability and aging constituents to inform program development and implementation. Integral to this role, ACL will use this mechanism to conduct research, evaluation, and assessment to understand the needs, barriers, or facilitators for ACL programs.

Comments in Response to the 60-Day Federal Register Notice

A 60-day notice for public comment published in the **Federal Register** (Vol. 88, No. 32 pages 10121–10122) on Thursday, February 16, 2023. No public comments were received.

Estimated Program Burden

ACL estimates the burden of this collection of information as follows:

A variety of instruments and platforms will be used to collect information from respondents. The annual burden hours (5,043) requested, and the anticipated number of respondents (10,086) are based on the number of qualitative information collection requests (ICRs) that were approved by OMB currently at ACL. Out of the total ICRs at ACL, we estimated that that 30% of them have a qualitative research component.

ACL used this information to develop the annual burden estimate below. Therefore, we estimate that over the requested period for this clearance (3 years) and approximately 30,258 respondents and 15,129 burden hours will be needed.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACL Program Recipient, Partner, or Key Informant	Qualitative Research	10,086	1	.5	5,043

Dated: May 8, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023–10122 Filed 5–12–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–3033 and FDA–2019–E–3025]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zemdri

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Zemdri and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by July 14, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–3033 and FDA–2019–E–3025 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ZEMDRI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the

Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Zemdri (plazomicin). It is indicated for the treatment of patients 18 years of age or older with Complicated Urinary Tract Infections including Pyelonephritis. Subsequent to this approval, the USPTO received patent term restoration application for Zemdri (U.S. Patent No. 8,383,596) from Achaogen, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated October 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Zemdri represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Zemdri is 3,447 days. Of this time, 3,203 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 18, 2009. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 18, 2009.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 25, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for Zemdri (NDA 210303) was initially submitted on October 25, 2017.

3. *The date the application was approved:* June 25, 2018. FDA has verified the applicant's claim that NDA 210303 was approved on June 25, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 389 days or 819 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10316 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–5283 and FDA–2019–E–5284]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cablivi

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Cablivi and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by July 14, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–5283 and FDA–2019–E–5284 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; CABLIVI.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product Cablivi (caplacizumab-yhdp). Cablivi is indicated for the treatment of adult patients with acquired thrombotic thrombocytopenic purpura in combination with plasma exchange and immunosuppressive therapy. Subsequent to this approval, the USPTO received patent term restoration applications for Cablivi (U.S. Patent Nos. 7,807,162 and 8,372,398) from Ablynx N.V., and the USPTO requested FDA's assistance in determining this patents' eligibility for patent term restoration. In a letter dated December 23, 2019, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of Cablivi represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Cablivi is 2,998 days. Of this time, 2,752 days occurred during the testing phase of the regulatory review period, while 246 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* November 24, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 24, 2010.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 6, 2018. FDA has verified the applicant's claim that the biologics license application (BLA) for Cablivi (BLA 761112) was initially submitted on June 6, 2018.

3. *The date the application was approved:* February 6, 2019. FDA has verified the applicant's claim that BLA 761112 was approved on February 6, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,216 days or 1,621 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to:

must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10295 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2019–E–1069; FDA–2019–E–1075; and FDA–2019–E–1073]

Determination of Regulatory Review Period for Purposes of Patent Extension; Onpattro

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Onpattro and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by July 14, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2019–E–1069; FDA–2019–E–1075; and FDA–2019–E–1073 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ONPATTRO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670)

generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Onpattro (patisiran), indicated for the treatment of the polyneuropathy of hereditary transthyretin-mediated amyloidosis in adults. Subsequent to this approval, the USPTO received patent term restoration applications for Onpattro (U.S. Patent Nos. 8,168,775; 8,741,866; 9,234,196) from Alnylam Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated July 14, 2020, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Onpattro represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Onpattro is 1,901 days. Of this time, 1,658 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective: May 29, 2013. Alnylam Pharmaceuticals, Inc. claims that June 7, 2013, is the date the investigational new drug application (IND) became effective. However, FDA's records indicate that the effective date of the IND was May 29, 2013, which was the first date after receipt of the IND that the investigational studies could proceed.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act: December 11, 2017. FDA has verified the applicant's claim that the new drug application (NDA) for Onpattro (NDA 210922) was initially submitted on December 11, 2017.

3. The date the application was approved: August 10, 2018. FDA has verified the applicant's claim that NDA 210922 was approved on August 10, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 593 days, 887 days or 1,025 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10317 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–2029]

Final Decision on Withdrawal of MAKENA (Hydroxyprogesterone Caproate) and Eight Abbreviated New Drug Applications Following Public Hearing; Availability of Final Decision

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the final decision withdrawing approval of MAKENA (hydroxyprogesterone caproate injection, 250 milligrams (mg) per milliliter (mL), once weekly), under the new drug application (NDA) 021945, held by Covis Pharma Group/Covis Pharma GmbH (Covis), and the eight abbreviated new drug applications (ANDAs) from multiple ANDA holders that reference NDA 021945. The Commissioner of Food and Drugs (the Commissioner) and the Chief Scientist jointly issued the decision following an October 2022 public hearing.

DATES: Approval of MAKENA and the ANDAs that reference MAKENA is withdrawn as of April 6, 2023.

FOR FURTHER INFORMATION CONTACT: Patrick Raulerson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6260, Silver Spring, MD 20993–0002, 301–796–3522, *Patrick.Raulerson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 2011, FDA's Center for Drug Evaluation and Research (CDER) approved NDA 021945 for MAKENA (hydroxyprogesterone caproate) Injection to reduce the risk of preterm birth (PTB) in women with a singleton pregnancy who have a history of singleton spontaneous PTB (sPTB). FDA approved MAKENA under the accelerated approval pathway, pursuant to section 506(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356(c)) and 21 CFR 314.510, based on evidence of the drug's effect on

an intermediate clinical endpoint that was considered reasonably likely to predict the drug's clinical benefit.

As a condition of MAKENA's approval, the sponsor was required to complete a postmarketing trial to verify and describe the clinical benefit of MAKENA in reducing neonatal morbidity and mortality from complications of PTB among babies born to women with a singleton pregnancy who had a previous singleton sPTB. This postmarketing confirmatory trial, Trial 003, failed to show that MAKENA reduced the risk of neonatal morbidity and mortality from complications of PTB and failed to show a treatment effect of MAKENA on the intermediate clinical endpoint that was the basis of MAKENA's approval.

On October 5, 2020, CDER issued a proposal to withdraw approval of MAKENA and a notice of opportunity for hearing (NOOH) on two independent grounds using expedited procedures under section 506(c)(3) of the FD&C Act and 21 CFR 314.530(a): (1) the confirmatory trial failed to verify the clinical benefit of the drug and (2) the evidence demonstrates that the drug is not shown to be effective under its conditions of use. CDER's NOOH and proposal to withdraw approval of MAKENA also provided notice to all holders of approved ANDAs referencing the NDA for MAKENA (NDA 021945) that, if the Agency were to withdraw approval of MAKENA, CDER would withdraw approval of those ANDAs under 21 CFR 314.151(b)(3).

MAKENA's sponsor submitted a hearing request dated October 14, 2020, followed by a submission of data and information in support of the hearing request. The Agency granted the sponsor's hearing request on August 18, 2021, and on August 17, 2022, published a notice of hearing (87 FR 50626). The hearing was held on October 17, 18, and 19, 2022. The Obstetrics, Reproductive and Urologic Drugs Advisory Committee was present at the hearing to review the issues involved and to provide advice and recommendations to the Commissioner. The presiding officer issued a report, dated January 19, 2023, that summarized the legal and factual background, content of the hearing, and her analysis and recommendations. On April 6, 2023, after considering CDER's and Covis' March 6, 2023, post-hearing submissions, the Commissioner and Chief Scientist jointly issued a final decision withdrawing approval of MAKENA and the ANDAs that referenced MAKENA.

FDA has withdrawn approvals of the following NDA and eight ANDAs:

Application No.	Drug	Holder/sponsor
NDA 021945	Makena (hydroxyprogesterone caproate) Injection, 250 mg per mL	Covis Pharma Group/Covis Pharma GmbH.
ANDA 208381	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Sun Pharmaceutical Industries, Ltd.
ANDA 210618	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Slayback Pharma LLC.
ANDA 210723	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	American Regent, Inc.
ANDA 210724	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Do.
ANDA 210877	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Slayback Pharma LLC.
ANDA 211070	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Eugia Pharma Specialities Ltd.
ANDA 211071	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Do.
ANDA 211777	Hydroxyprogesterone Caproate Injection USP, 250 mg/mL	Aspen Pharma USA Inc.

Withdrawal of approval of the applications listed in the table includes all strengths, dosage forms, amendments, and supplements to these applications, effective April 6, 2023. As discussed in the decision of the Commissioner and Chief Scientist, FDA has withdrawn approval of the MAKENA NDA for reasons of safety or effectiveness, as well as approval of the ANDAs that reference MAKENA.

Section 505(j)(7) of the FD&C Act (21 U.S.C. 355(j)(7)) requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book,'' available at *https://www.accessdata.fda.gov/scripts/cder/ob/index.cfm.* Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness 21 CFR 314.162. Accordingly, the Agency has removed the applications listed in the table from the list of drug products published in the Orange Book. FDA will not accept or approve ANDAs that reference MAKENA.

II. Electronic Access

Persons with access to the internet may obtain the final decision at *https://downloads.regulations.gov/FDA-2020-N-2029-0385/attachment_1.pdf.* The final decision, a transcript of the hearing, and other documents pertaining to the withdrawal of the NDA for MAKENA (NDA 021945) are available at *https://www.regulations.gov* under the docket number found in brackets in the heading of this document.

Dated: May 8, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10264 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–1905 and FDA–2020–E–1896]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tack Endovascular System (6F)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Tack Endovascular System (6F) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that medical device.

DATES: Anyone with knowledge that any of the dates as published (see

SUPPLEMENTARY INFORMATION) are incorrect must submit either electronic or written comments and ask for a redetermination by July 14, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 13, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 14, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2020–E–1905 and FDA–2020–E–1896 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TACK ENDOVASCULAR SYSTEM (6F).'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device Tack Endovascular System (6F). Tack Endovascular System (6F) is indicated for use in the superficial femoral and proximal popliteal arteries ranging in diameter from 3.5 millimeters (mm) to 6.0 mm for the repair of post percutaneous transluminal balloon angioplasty dissection(s). Subsequent to this approval, the USPTO received patent term restoration applications for Tack Endovascular System (6F) (U.S. Patent Nos. 9,375,327 and 9,603,730) from INTACT VASCULAR, INC., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated November 9, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of Tack Endovascular System (6F) represented the first permitted commercial

marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Tack Endovascular System (6F) is 1,338 days. Of this time, 1,114 days occurred during the testing phase of the regulatory review period, while 224 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective:* August 14, 2015. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) for human tests to begin, as required under section 520(g) of the FD&C Act, became effective August 14, 2015.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* August 31, 2018. FDA has verified the applicant's claim that the premarket approval application (PMA) for Tack Endovascular System (6F) (PMA P180034) was initially submitted August 31, 2018.

3. *The date the application was approved:* April 11, 2019. FDA has verified the applicant's claim that PMA P180034 was approved on April 11, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 485 days or 621 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: May 10, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10297 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1703]

Determination That CATAPRES (Clonidine Hydrochloride) Tablets, 0.1 Milligrams; 0.2 Milligrams; and 0.3 Milligrams, and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table are no longer being marketed.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 017407	CATAPRES	Clonidine Hydrochloride	0.1 Milligrams (mg); 0.2 mg; 0.3 mg	Tablet; Oral	Boehringer Ingelheim.
NDA 017534	FIORINAL	Aspirin; Butalbital; Caffeine.	325 mg; 50 mg; 40 mg	Capsule; Oral	Allergan Sales.

Application No.	Drug name	Active ingredient(s)	Strength(s)	Dosage form/route	Applicant
NDA 017876	LOESTRIN 21 1/20	Ethinyl Estradiol; Norethindrone Acetate.	0.02 mg; 1 mg	Tablet; Oral	Teva Branded Pharms.
NDA 018647	CORZIDE	Bendroflumethiazide; Nadolol.	5 mg; 40 mg; 5 mg; 80 mg	Tablet; Oral	King Pharms., LLC.
NDA 018685	GAVISCON	Aluminum Hydroxide; Magnesium Trisilicate.	80 mg; 20 mg; 160 mg, 40 mg	Tablet; Oral	Chattem.
NDA 018751	SPECTAZOLE	Econazole Nitrate	1%	Cream; Topical	Alvogen, Inc.
NDA 019813	DURAGESIC–100	Fentanyl	100 Micrograms (mcg)/Hour; 12.5 mcg/Hour; 25 mcg/Hour; 37.5 mcg/Hour; 50 mcg/Hour; 75 mcg/Hour.	Film, Extended Release; Transdermal.	Janssen Pharms.
NDA 020519	CICLOPIROX	Ciclopirox	0.77%	Gel; Topical	Alvogen, Inc.
NDA 021015	ANDROGEL	Testosterone	25 mg/2.5 Grams (g) Packet; 50 mg/5 g Packet.	Gel; Transdermal	Besins Healthcare.
NDA 021152	CUTIVATE	Fluticasone Propionate ..	0.05%	Lotion; Topical	Fougera Pharms.
NDA 021169	RAZADYNE	Galantamine Hydrobromide.	Equivalent to (EQ) 4 mg Base; EQ 8 mg Base; EQ 12 mg Base.	Tablet; Oral	Janssen Pharms.
NDA 021567	REYATAZ	Atazanavir Sulfate	EQ 150 mg Base	Capsule; Oral	Bristol Myers Squibb.
NDA 021695	ANTARA (MICRONIZED).	Fenofibrate	30 mg	Capsule; Oral	Lupin.
NDA 022107	TEKTURNA HCT	Aliskiren Hemifumarate; Hydrochlorothiazide.	EQ 150 mg Base; 12.5 mg; EQ 150 mg Base; 25 mg; 300 mg; 12.5 mg; 300 mg; 25 mg.	Tablet; Oral	Noden Pharma.
NDA 022309	ANDROGEL	Testosterone	1.62% (20.25 mg/1.25 g Packet); 1.62% (40.5 mg/2.5 g Packet).	Gel; Transdermal	Besins Healthcare.
NDA 022401	TWYNSTA	Amlodipine Besylate; Telmisartan.	EQ 5 mg Base; 40 mg; EQ 10 mg Base; 40 mg; EQ 5 mg Base; 80 mg; EQ 10 mg Base; 80 mg.	Tablet; Oral	Boehringer Ingelheim.
NDA 022426	OSENI	Alogliptin Benzoate; Pioglitazone Hydrochloride.	EQ 12.5 mg Base; EQ 15 mg Base; EQ 12.5 mg Base; EQ 45 mg Base.	Tablet; Oral	Takeda Pharms. USA.
NDA 050824	OMEPRAZOLE AND CLARITHROMYCIN AND AMOXICILLIN.	Amoxicillin; Clarithromycin; Omeprazole.	500 mg, n/a, n/a; n/a, 500 mg, n/a; n/a, n/a, 20 mg.	Capsule, Tablet, Capsule, Delayed Release; Oral.	Cumberland Pharms.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the drug products listed are unaffected by the discontinued marketing of the products subject to these applications. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10296 Filed 5–12–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in

the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on March 1, 2023, through March 31, 2023. This list provides the name of the petitioner, city, and state of vaccination (if unknown then the city and state of the person or attorney filing the claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,

Administrator.

List of Petitions Filed

1. Andrew Williamson, Shawnee Mission, Kansas, Court of Federal Claims No: 23–0301V
2. Hoberleigh Nicholson, Bowling Green, Kentucky, Court of Federal Claims No: 23–0302V
3. David Kiss, Malvern, Pennsylvania, Court of Federal Claims No: 23–0304V
4. Nancy Hardy, Dallas, Texas, Court of Federal Claims No: 23–0305V
5. Freddrick T. Pollard, Redgranite, Wisconsin, Court of Federal Claims No: 23–0307V
6. Brian Bieber, Sioux Falls, South Dakota, Court of Federal Claims No: 23–0309V
7. Haley Ferguson, Phoenix, Arizona, Court of Federal Claims No: 23–0312V
8. Jennifer Teeter, Johnstown, Pennsylvania, Court of Federal Claims No: 23–0313V
9. Reba Lopez, Milwaukee, Wisconsin, Court of Federal Claims No: 23–0315V
10. Amanda Soliz, Boston, Massachusetts, Court of Federal Claims No: 23–0316V
11. Heather Jowett, Detroit, Michigan, Court of Federal Claims No: 23–0317V
12. Ashley Jennings, Independence, Missouri, Court of Federal Claims No: 23–0318V
13. David Deocampo, Blue Ash, Ohio, Court of Federal Claims No: 23–0319V
14. Aynabeba Singh, Howell, New Jersey, Court of Federal Claims No: 23–0323V
15. Dawn Guerrero, North Babylon, New York, Court of Federal Claims No: 23–0325V
16. Kristin Maeckel, Alpharetta, Georgia, Court of Federal Claims No: 23–0326V
17. Jenny Neidig, Sunbury, Pennsylvania, Court of Federal Claims No: 23–0327V
18. Heidi Flanagan, Oakland, California, Court of Federal Claims No: 23–0328V
19. Charlotte J. Bridges, Morganton, North Carolina, Court of Federal Claims No: 23–0329V
20. Gayle Duncan, Lutherville-Timonium, Maryland, Court of Federal Claims No: 23–0331V
21. Austen Walker, San Antonio, Texas, Court of Federal Claims No: 23–0333V
22. Randall Steffens, Weimar, California, Court of Federal Claims No: 23–0336V
23. Gayle Mckay, Houston, Texas, Court of Federal Claims No: 23–0337V
24. Matthew Gudorf, Uhrichsville, Ohio, Court of Federal Claims No: 23–0342V
25. Mashonda Graham, Granite City, Illinois, Court of Federal Claims No: 23–0344V
26. Brian Reese, La Mesa, California, Court of Federal Claims No: 23–0345V
27. Dale Prindle, Wauconda, Illinois, Court of Federal Claims No: 23–0346V
28. Linda Johnson on behalf of the Estate of Joseph Johnson, Sr., Deceased, Covington, Louisiana, Court of Federal Claims No: 23–0347V
29. Josephine Corban, Boston, Massachusetts, Court of Federal Claims No: 23–0349V
30. Cheryl Weakley, San Diego, California, Court of Federal Claims No: 23–0350V
31. Diane Fisher, Woodbridge, Illinois, Court of Federal Claims No: 23–0352V
32. Charleigh Gadd, Phoenix, Arizona, Court of Federal Claims No: 23–0353V
33. Olivia Warpula, Phoenix, Arizona, Court of Federal Claims No: 23–0354V
34. David Krube, Boston, Massachusetts, Court of Federal Claims No: 23–0355V
35. Lauren Blinder, Lakeland, Florida, Court of Federal Claims No: 23–0356V
36. Christa Leininger, Kansas City, Missouri, Court of Federal Claims No: 23–0357V
37. Charlie Booth, Clackamas, Oregon, Court of Federal Claims No: 23–0358V
38. Linda Ruocco, Mount Vernon, New York, Court of Federal Claims No: 23–0360V
39. Elizabeth Soriano, Santa Clara, California, Court of Federal Claims No: 23–0362V
40. Chris Watson, North Kansas City, Missouri, Court of Federal Claims No: 23–0364V
41. Gwendolyn Giorgi, Providence, Rhode Island, Court of Federal Claims No: 23–0365V
42. Pearlene Derello, Mebane, North Carolina, Court of Federal Claims No: 23–0366V
43. Marna Harmon, Ottawa, Illinois, Court of Federal Claims No: 23–0367V
44. April Chesnutt-Kriss, St. Louis, Missouri, Court of Federal Claims No: 23–0368V
45. Laureen Usina, Fort Wayne, Indiana, Court of Federal Claims No: 23–0369V
46. Kaitlyn Sorby, Las Vegas, Nevada, Court of Federal Claims No: 23–0370V
47. Joya Wotila, Southlake, Texas, Court of Federal Claims No: 23–0371V
48. Suzanne C. Anderson, Bangor, Maine, Court of Federal Claims No: 23–0373V
49. Diana Smith, Menlo Park, California, Court of Federal Claims No: 23–0375V
50. Barbara Dorsett, Sacramento, California, Court of Federal Claims No: 23–0377V
51. Joan Barclay, Babylon, New York, Court of Federal Claims No: 23–0378V
52. Hannah Huie, Phoenix, Arizona, Court of Federal Claims No: 23–0379V
53. Renee Rini, Albuquerque, New Mexico, Court of Federal Claims No: 23–0380V
54. Kenneth Arrington, Boston, Massachusetts, Court of Federal Claims No: 23–0381V
55. Rekha Kumar, Arcadia, California, Court of Federal Claims No: 23–0382V
56. Charlie Benedick, Casper, Wyoming, Court of Federal Claims No: 23–0384V
57. Al Raya, Bedford, Virginia, Court of Federal Claims No: 23–0385V
58. Steve Cantalupo on behalf of A.C., Phoenix, Arizona, Court of Federal Claims No: 23–0388V
59. Muriel Childs, Dyer, Indiana, Court of Federal Claims No: 23–0389V
60. Elizabeth Sanchez Denton, Dan Diego, California, Court of Federal Claims No: 23–0390V
61. Matthew Iroku, Phoenix, Arizona, Court of Federal Claims No: 23–0395V
62. Marcia Rea, Woodland Hills, California, Court of Federal Claims No: 23–0397V
63. Kimberly Uribe, Haslett, Michigan, Court

of Federal Claims No: 23–0398V
64. Karey Dunaway, Dublin, Ohio, Court of Federal Claims No: 23–0400V
65. Lisa McMurtry on behalf of M.M., Phoenix, Arizona, Court of Federal Claims No: 23–0404V
66. Barbara Glover, Elm City, North Carolina, Court of Federal Claims No: 23–0406V
67. Kim Leone, Boston, Massachusetts, Court of Federal Claims No: 23–0407V
68. Alexa Flores, Phoenix, Arizona, Court of Federal Claims No: 23–0408V
69. Richard Liebell, Boston, Massachusetts, Court of Federal Claims No: 23–0409V
70. Michelle Wombold, Gainesville, Florida, Court of Federal Claims No: 23–0410V
71. Joanne Costello, New Milford, Connecticut, Court of Federal Claims No: 23–0411V
72. Mackenzie Gardett, Phoenix, Arizona, Court of Federal Claims No: 23–0412V
73. Leslie Sager, Seattle, Washington, Court of Federal Claims No: 23–0413V
74. Crystal Morefield on behalf of A.J., Phoenix, Arizona, Court of Federal Claims No: 23–0414V
75. Shelly Simms on behalf of R.S., Phoenix, Arizona, Court of Federal Claims No: 23–0419V
76. Cortney Ball, London, Ohio, Court of Federal Claims No: 23–0420V
77. Cara Fowler, Westerville, Ohio, Court of Federal Claims No: 23–0421V
78. Ian Bruening, Cumming, Georgia, Court of Federal Claims No: 23–0422V
79. Lori Wigler, New York City, New York, Court of Federal Claims No: 23–0426V
80. Michael Veystel, Newark, New Jersey, Court of Federal Claims No: 23–0428V
81. Kevin Charles McIntosh, Grants Pass, Oregon, Court of Federal Claims No: 23–0429V
82. Madeleine Karol, San Diego, California, Court of Federal Claims No: 23–0432V
83. Clarissa Olive, Phoenix, Arizona, Court of Federal Claims No: 23–0435V
84. Teresa Farias, Mission, Texas, Court of Federal Claims No: 23–0436V
85. Dora Homann, Huntersville, North Carolina, Court of Federal Claims No: 23–0437V
86. Tracy Barnhart on behalf of A.B., Lockport, Illinois, Court of Federal Claims No: 23–0439V
87. Wendy Hubbard, Houston, Texas, Court of Federal Claims No: 23–0440V
88. Nora Barron, Hoboken, New Jersey, Court of Federal Claims No: 23–0442V
89. Michael Stack, Tampa, Florida, Court of Federal Claims No: 23–0454V
90. Elizabeth Culhane, Greenwood, Michigan, Court of Federal Claims No: 23–0456V
91. Kimberly Sullivan on behalf of M.S., Phoenix, Arizona, Court of Federal Claims No: 23–0458V
92. Jan Holt on behalf of K.S., Phoenix, Arizona, Court of Federal Claims No: 23–0459V
93. Venetia Royster on behalf of M.L., Greensboro, North Carolina, Court of Federal Claims No: 23–0460V

[FR Doc. 2023–10281 Filed 5–12–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Regional AIDS Education and Training Centers Program Supplemental Award

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing a Supplemental Award for Ryan White HIV/AIDS Program (RWHAP), Regional AIDS Education and Training Center (AETC) award recipient, University of Massachusetts (UMass).

SUMMARY: HRSA will provide supplemental funding to UMass, a current Regional AETC Program award recipient, for a 1-year period of performance and 1-year budget period to support a program designed to train internal and family medicine residents to specialize in HIV treatment and care management. This training program is critically needed, as it will help increase the number of primary HIV care providers available to diagnose, treat, and medically manage people with HIV and address urgent needs stemming from the HIV care workforce shortage.

FOR FURTHER INFORMATION CONTACT: Suzanne Abo, Management Analyst, Office of Program Support, HIV/AIDS Bureau, HRSA, at *sabo@hrsa.gov* and (301) 945–4537.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: UMass, a Regional AETC Program award recipient that currently has the capacity and an existing program designed to train medical residents in HIV care to help increase the number of providers who can serve people with HIV and address the critical provider shortage.

Amount of Non-Competitive Award: One award for $450,000.

Project Period: July 1, 2023, to June 30, 2024.

Assistance Listing (CFDA) Number: 93.145.

Award Instrument: Supplement for HIV/AIDS Workforce Development and Training Services.

Authority: Section 2692(a) (42 U.S.C. 300ff–111(a)) and section 2693 (42 U.S.C. 300ff–121) of the Public Health Service Act.

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	City, state	Award amount
6 U1OHA29294–08–03	University of Massachusetts	MA	$450,000

Justification: The HIV care workforce continues to decrease, directly impacting the ability of RWHAP to meet the goals and objectives of the Ending the HIV Epidemic in the United States by 2030. Experts indicate that fewer medical trainees are entering the field of HIV and that workforce trends are not keeping pace with the rates of HIV infection. Given the overall HIV/AIDS care workforce challenges presented, it is imperative that purposeful action is taken to support the current workforce. According to a recent HIV care provider study conducted by the RWHAP National Coordinating Resource Center, in addition to the current workforce shortages, 10.5 percent of the current providers surveyed will be leaving HIV care in 5 years, and an additional 7.3 percent of those surveyed will be decreasing the number of patients with HIV to whom they provide care.

In November 2022, UMass, a current award recipient of the Regional AETC Program, submitted an unsolicited proposal to HRSA's HIV/AIDS Bureau to support a program designed to train internal and family medicine residents to specialize in HIV care and management. The HIV Pathways Consortium Program (Pathways) is designed to increase the number of primary care providers that have the knowledge and expertise to provide direct care services and treatment to people with HIV and train other primary care providers. UMass has implemented Pathways for several years and has been able to demonstrate impact on the HIV care workforce. Pathways aligns with the purpose and scope of work for the Regional AETC Program as described in the current Fiscal Year 2019 Notice of Funding Opportunity (HRSA 19–035).

The proposal underwent extensive review per the guidelines established by HHS and HRSA for a recipient initiated supplemental funding proposal. Having met the HHS guidelines, further review determined that the proposal aligns

with the current activities of the AETC Program, is of significant benefit to the government, and meets the legislative intent of the Ryan White HIV/AIDS AETC Program. In addition, recipient initiated supplemental funding proposals require a technical review and are not required to undergo a competitive process.

This award will greatly enhance the ability of the AETC program to target and increase the number of trained HIV physician providers, including those trained at minority-serving institutions. In addition, Pathways will quickly introduce new providers into the HIV care workforce, address critical workforce shortages, and aid the federal government in reaching the goal to end HIV by 2030. The proposed project will be a new activity under UMass' current Regional AETC Program award. HRSA will award $450,000 in supplemental funding to UMass for a 1-year project and budget period.

Carole Johnson,

Administrator.

[FR Doc. 2023–10302 Filed 5–12–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0390]

Agency Father Generic Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Service, HHS.

ACTION: Notice and request for comments. Office of the Assistant Secretary for Public Affairs is requesting OMB approval for a new father generic clearance.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 14, 2023.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041. When requesting information, please include the document identifier 0990–0390–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Challenge and Prize Competition Solicitations.

Type of Collection: Reinstatement without change.

OMB No. 0990–0390—Office of the Assistant Secretary for Health (OASH).

Abstract: The Office of the Secretary (OS), Department of Health & Human Services (HHS) requests that the Office of Management and Budget (OMB) approve a request for an extension of generic clearance approval of the information collected for challenge and prize competition solicitations. Burden hours were increased from 333 to 558.3 total burden hours to provide more time for respondents to complete forms that may include more questions.

Challenges and prize competitions enable HHS to tap into the expertise and creativity of the public in new ways as well as extend awareness of HHS programs and priorities. Within HHS, the Office of the Assistant Secretary for Health (OASH) has taken lead responsibility in coordinating challenges and prize competitions and implementing policies regarding the use of these tools. HHS's goal is to engage a broader number of stakeholders who are inspired to work on some of our most pressing health issues, thus supporting a new ecosystem of scientists, developers, and entrepreneurs who can continue to innovate for public health.

The generic clearance is necessary for HHS to launch several challenges or prize competitions annually in a short turnaround. The information collected for these challenges and prize competitions will generally include the submitter's or other contact person's first and last name, organizational affiliation and role in the organization (for identification purposes); email address or other contact information (to follow up if the submitted solution is selected as a finalist or winner); street address (to confirm that the submitter or affiliated organization is located in the United States, for eligibility purposes); information confirming whether the submitter's age is 13 years or older (to ensure compliance with the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501–6505 (COPPA)) or 18 years or older (to ensure necessary consents are obtained); and a narrative description of the solution. HHS may also request information indicating the submitter's technical background, educational level, ethnicity, age range, gender, and race (to evaluate entrants' diversity and backgrounds), how the submitter learned about the challenge or prize competition and what the submitter currently understands about the HHS agency hosting the challenge or prize competition (to gauge the effect of the challenge or prize competition on increasing public awareness of HHS programs and priorities, and generally to enable HHS to improve its outreach strategies to ensure a diverse and broad innovator constituency is fostered through the use of challenges and prize competitions). Finally, HHS may ask for additional information tailored to the challenge or prize competition through structured questions. This information will enable HHS to create and administer challenges and prize competitions more effectively.

Upon entry or during the judging process, solvers under the age of 18 will be asked to confirm parental consent, which will require them to obtain and provide a parent or guardian signature in a format outlined in the specific criteria of each challenge or prize competition in order to qualify for the contest. To protect online privacy of minors, birthdate may be required by the website host to ensure the challenge platform meets the requirements of COPPA. Eligibility to win a cash prize will be outlined in the specific criteria of each contest and will only apply to U.S. citizens, permanent residents, or private entities incorporated in and maintaining a primary place of business in the U.S. To administer the cash prize, HHS will need to collect additional relevant payment information—such as Social Security Number and/or Taxpayer ID and information regarding the winners' financial institutions—in order to comply with financial accounting and income tax reporting processes.

Likely Respondents: Likely respondents include individuals, businesses, and state and local governments who choose to participate in a challenge or prize competition hosted or overseen (*i.e.,* via contract, etc.) by HHS.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondent (if necessary)	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden hours
Individuals or Households	1,500	1	10/60	250
Organizations	750	1	10/60	125
Businesses	1,000	1	10/60	166.7
State, territory, tribal or local governments	100	1	10/60	16.7
Total				558.3

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–10304 Filed 5–12–23; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review C–SEP.

Date: July 7–11, 2023.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review D–SEP.

Date: July 12–15, 2023.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Dem II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: John Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: May 9, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10261 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Biology and Development of the Eye Study Section, June 8–9, 2023, 9:00 a.m. to 6:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting) which was published in the **Federal Register** on May 1, 2023, 88 FR 26581, page 26581–26582.

The meeting notice is amended to change the SRO for the meeting from Kevin Czaplinski to Zubaida Saifudeen. The meeting is closed to the public.

Dated: May 9, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10226 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Career Development (Ks) and Conference (R13) Review.

Date: June 30, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM II, Suite 920, 6707 Democracy Blvd., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Alexander O. Komendantov, Ph.D., MS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20817, (301) 451–3397, *alexandar.komendantov@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: May 9, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10260 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; Interventions for Dementia Caregivers.

Date: June 14, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sandhya Sanghi, Ph.D., Scientific Research Officer, National Institute on Aging, 7201 Wisconsin Avenue, (2N230), NIA/SRB, Bethesda, MD 20814, (301) 496–2879, *sandhya.sanghi@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10267 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Study Section.

Date: June 20–22, 2023.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, (301) 594–7791, *charlene.repique@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10259 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Member Conflict Applications.

Date: June 15, 2023.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–827–7835, *yasuko.furumoto@nih.gov*.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Ancillary Studies to Ongoing Clinical Projects.

Date: June 28, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Room 814, Bethesda, MD 20892, *sushmita.purkayastha@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10265 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Study Section.

Date: June 22–23, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Study Section.

Date: June 29–30, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: AC Hotel by Marriott Bethesda Downtown, 4646 Montgomery Avenue, Bethesda, MD 20814.

Contact Person: Bernard Joseph Dardzinski, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Room 824, Plaza One, Bethesda, MD 20817, 301–435–1146, *bernard.dardzinski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10266 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services: Quality and Effectiveness Study Section.

Date: June 14–15, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfax Marriott at Fair Oaks, 11787 Lee Jackson Memorial Highway, Fairfax, VA 22033.

Contact Person: Angela D. Thrasher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 480–6894, *thrasherad@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Science of Implementation in Health and Healthcare Study Section.

Date: June 14–15, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Wenjuan Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 480–8667, *wangw22@mail.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Viral Pathogenesis and Immunity Study Section.

Date: June 14–15, 2023.

Time: 9:00 a.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: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1742, *kaushikbasun@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Vascular Inflammation Study Section.

Date: June 15–16, 2023.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, *komissar@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 15–16, 2023.

Time: 8:00 a.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Georgetown, 2121 M Street, Washington, DC 20037.

Contact Person: Richard Michael Lovering, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 867–5309, *loveringrm@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Human Studies of Diabetes and Obesity Study Section.

Date: June 15–16, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, (301) 435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neuronal Communications Study Section.

Date: June 15–16, 2023.

Time: 9:00 a.m. to 8:30 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: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *prithi.rajan@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: June 15–16, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Molecular and Cellular Biology of Virus Infection Study Section.

Date: June 15–16, 2023.

Time: 9:30 a.m. to 7:30 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: Kenneth M. Izumi, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Bethesda, MD 20892, 301–496–6980, *izumikm@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Interoception and Chemosensation Study Section.

Date: June 15, 2023.

Time: 10:00 a.m. to 7:30 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: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 9, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10225 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: June 6, 2023.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Stephanie J. Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–V, Bethesda, MD 20892, (301) 827–7992, *stephanie.webb@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; T35 Training Grants Review.

Date: June 8, 2023.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; HEAL: Sleep Predictors of Opioid Use Disorders Treatment Review.

Date: June 15, 2023.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shelley Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–T, Bethesda, MD 20817, (301) 827–7984, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; R38 StARR Review Meeting.

Date: June 15, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 827–7953, *kristen.page@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; PPG Special Emphasis Panel.

Date: June 16, 2023.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; MOSAIC K99/R00.

Date: June 23, 2023.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kazuyo Kegan, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892, (301) 402–1334, *kazuyo.kegan@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze: Product Definition.

Date: June 27, 2023.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office Scientific Review, Division of Extramural Research Activities (DERA), National Institute of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Grant Review for NHLBI K Award Recipients.

Date: June 29, 2023.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sun Saret, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 435–0270, *sun.saret@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10224 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program Board of Scientific Counselors; Announcement of Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice announces continuation of the May 4, 2023, meeting of the National Toxicology Program (NTP) Board of Scientific Counselors (BSC) on May 16, 2023. The BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors. During a public meeting on May 4, the BSC considered a report from its Working Group containing proposed recommendations on whether NTP authors sufficiently addressed internal and external scientific comments on NTP's systematic review to evaluate the neurobehavioral health effects from exposure to fluoride during development, as set forth in NTP's Draft State of the Science Monograph and Draft Meta-Analysis Manuscript. After deliberation and discussion, the BSC voted to accept the Working Group's report in full, with the exception of one paragraph on page 323 related to an IQ statistic that the BSC asked the Working Group to verify or correct. The Working Group has reexamined the text, and the BSC will discuss and deliberate the Working Group's updated input at the meeting on May 16. This is a virtual meeting and open to the public. This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

DATES:

Meeting: Scheduled for May 16, 2023, 3:00–3:30 p.m. Eastern Daylight Time (EDT). Ending time is approximate; meeting may end earlier or run later.

ADDRESSES:

Meeting web page: The preliminary agenda and other meeting materials will be available at *https://ntp.niehs.nih.gov/go/165* by 5 p.m. on May 12, 2023.

Virtual Meeting: A link to the URL for viewing the virtual meeting will be provided on the meeting web page by noon the day before the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Milene Brownlow, Designated Federal Officer for the BSC, Office of Policy, Review, and Outreach, Division of Translational Toxicology, NIEHS. Phone: 984–287–3364, Email: *milene.brownlow@nih.gov.*

SUPPLEMENTARY INFORMATION: The NTP conducted a systematic review to evaluate the neurobehavioral health effects from exposure to fluoride during development and prepared a Draft State of the Science Monograph and a Draft Meta-Analysis Manuscript. Both draft documents were reviewed internally by various Department of Health and Human Services (HHS) entities and, additionally, the Draft State of the Science Monograph underwent external peer review by five scientific experts. Subsequently, the NTP Director decided to seek additional review of these documents from the NTP BSC. In 2022, the NTP Director and the NTP BSC Chair jointly made the decision to convene an independent working group of subject-matter experts to assist the BSC in reviewing the input on the two documents along with NTP authors' responses to the comments. The BSC Working Group's report with its recommendations on whether the authors sufficiently addressed internal and external scientific comments was deliberated at the BSC at a meeting on May 4, 2023. The BSC voted to accept the Working Group's report in full, with the exception of one paragraph on page 323 related to an IQ statistic that the BSC asked the Working Group to verify or correct. The meeting on May 16, 2023, is a continuation of the May 4 meeting where the BSC will take action on the BSC Working Group's updated input. This is the only agenda topic for this meeting.

The preliminary agenda, the Working Group Report as approved by the BSC on May 4, 2023, the Working Group's updated text about the IQ statistic, the roster of BSC members, and any additional information, when available, will be posted on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*), and minutes will be available on the BSC meeting web page within 90 calendar days of the meeting.

Meeting Attendance Registration: The meeting is open to the public. Registration is not required to view the virtual meeting; a link to the webcast for the virtual meeting will be provided on the BSC meeting web page (*https://ntp.niehs.nih.gov/go/165*) by noon the day before the meeting. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Meeting Materials: The preliminary meeting agenda will be available on the meeting web page (*https://ntp.niehs.nih.gov/go/165*) by 5 p.m. on May 12, 2023. Individuals are encouraged to access the meeting web page periodically to stay abreast of the most current information regarding the meeting.

Background Information on the BSC: The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the NTP. Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, epidemiology, risk assessment, carcinogenesis, mutagenesis, cellular biology, computational toxicology, neurotoxicology, genetic toxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. The BSC usually meets periodically. The authority for the BSC is provided by 42 U.S.C. 217a, section 222 of the Public Health Service Act (PHS), as amended.

The BSC is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. ch. 10).

Dated: May 9, 2023.

Richard P. Woychik,

Director, National Institute of Environmental Health Sciences and National Toxicology Program, National Institutes of Health.

[FR Doc. 2023–10230 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special

Topics: Noninvasive Neuromodulation and Neuroimaging Technologies.

Date: June 9, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Pablo Miguel Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 12–13, 2023.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Karen Elizabeth Seymour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000–E, Bethesda, MD 20892, (301) 443–9485, *karen.seymour@nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Transmission of Vector-Borne and Zoonotic Diseases Study Section.

Date: June 12–13, 2023.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Haruhiko Murata, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3245, *muratah@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 20–103: Collaborative Program Grant for Multidisciplinary Teams (RM1).

Date: June 12, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Pain and Itch Study Section.

Date: June 13–14, 2023.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, *anne-sophie.wattiez@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: June 13–14, 2023.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: June 13–14, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Anti-Infective Resistance and Targets Study Section.

Date: June 13–14, 2023.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jui Pandhare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7735, *pandharej2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10263 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; Stem Cell III.

Date: June 20, 2023.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10269 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; Circadian Clocks and Aging.

Date: June 29, 2023.

Time: 10:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis-Hardell, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, 7201 Wisconsin Ave., Rm. 2E405, Bethesda, MD 20814, (301) 555–1234, *kaitlyn.hardell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 9, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–10268 Filed 5–12–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–ES–2021–0014; FF09E30000 FXES11140900000 234]

RIN 1018–ZA07; 1018–ZA08

U.S. Fish and Wildlife Service Mitigation Policy and Endangered Species Act Compensatory Mitigation Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of final policies.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the revised Mitigation Policy and the Endangered Species Act (ESA) Compensatory Mitigation Policy. The revised Mitigation Policy establishes fundamental mitigation principles and provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, no net loss of resources and their values, services, and functions resulting from proposed actions. The ESA Compensatory Mitigation Policy adopts the mitigation principles established in the Mitigation Policy, establishes compensatory mitigation standards, and provides guidance for the application of compensatory mitigation through implementation of the ESA.

DATES: The policies are effective May 15, 2023.

ADDRESSES: The revised Mitigation Policy is available at *https://www.fws.gov/policy/a1501fw2.pdf.* The revised ESA Compensatory Mitigation Policy is available at *https://www.fws.gov/policy/a1501fw3.pdf.* In addition, both policies are available at *https://www.regulations.gov* in Docket No. FWS–HQ–ES–2021–0014.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, by mail at U.S. Fish and Wildlife Service, Division of Environmental Review, 5275 Leesburg Pike, Falls Church, VA 22041–3803; by email at *craig_aubrey@fws.gov;* or by telephone at 703–358–2442. 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

Consistent with the mission of the Service and congressional direction through the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–667(e)); the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*); and similar environmental statutes, the Service has the responsibility to ensure that impacts to fish, wildlife, plants, and their habitats are considered when actions are planned, and that those impacts are mitigated so that these resources may provide a continuing benefit to the American people.

The purpose of the revised Mitigation Policy is to provide guidance to Service personnel in formulating and delivering recommendations and requirements to action agencies and project proponents so that they may avoid, minimize, and compensate for action-caused impacts to species and their habitats, and uses thereof. The revised Mitigation Policy establishes fundamental mitigation principles and provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, no net loss of resources and their values, services, and functions resulting from proposed actions. The primary intent of the revised Mitigation Policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales.

The purpose of the ESA Compensatory Mitigation Policy is to provide guidance to Service personnel as they seek to mitigate losses to endangered and threatened species and their habitats resulting from proposed actions to further the purposes of the ESA. The ESA Compensatory Mitigation Policy adopts the mitigation principles established in the revised Mitigation Policy, establishes compensatory mitigation standards, and provides guidance for the application of compensatory mitigation through implementation of the ESA. It covers all compensatory mitigation mechanisms, including, but not limited to, proponent-responsible mitigation, conservation banking, and in-lieu fee programs, and all species and habitats protected under the ESA for which the Service has jurisdiction.

Prior Policies

The Service's original Mitigation Policy (46 FR 7644, January 23, 1981) has guided our recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats since 1981. The revisions reflected in the revised Mitigation Policy are motivated by changes in conservation challenges and practices since 1981, including accelerating loss of habitats, effects of climate change, and advances in conservation science. The revised Mitigation Policy integrates all authorities that allow the Service to recommend or require mitigation of impacts to fish and wildlife resources, and other resources identified in statute, during development processes. It is intended to serve as a single umbrella policy under which the Service may issue more detailed policies or guidance documents covering specific activities in the future.

The ESA Compensatory Mitigation Policy serves as the Service's comprehensive treatment of compensatory mitigation under the authority of the ESA. The ESA Compensatory Mitigation Policy clarifies guidance in the Service's ''Guidance for the Establishment, Use, and Operation of Conservation Banks,'' published in the **Federal Register** on May 8, 2003 (68 FR 24753), and ''Guidance on Recovery Crediting for the Conservation of Threatened and Endangered Species,'' published in the **Federal Register** on July 31, 2008 (73 FR 44761).

We previously published a Mitigation Policy (81 FR 83440, November 21, 2016) and an ESA Compensatory

Mitigation Policy (81 FR 95316, December 27, 2016). We later requested public comment on portions of those policies, specifically comments on the policies' mitigation planning goals (82 FR 51382, November 6, 2017). We subsequently withdrew the Mitigation Policy that was published in 2016 and reinstated the Mitigation Policy that was published in 1981 (83 FR 36472, July 30, 2018). We also withdrew the ESA Compensatory Mitigation Policy that was published in 2016 and reinstated all policies or guidance documents that were superseded by that policy (83 FR 36469, July 30, 2018).

In our withdrawal notices in 2018, the Service concluded, in light of national policy direction reflected in Executive Order (E.O.) 13783, ''Promoting Energy Independence and Economic Growth'' (82 FR 16093, March 28, 2017); the comments received by the Service; and concerns regarding the legal and policy implications of compensatory mitigation with a mitigation planning goal of net conservation gain, that it was no longer appropriate to retain references to a goal of net conservation gain within the policies. We further concluded that, because the goal of net conservation gain was so prevalent throughout the policies, this concern should be resolved by withdrawing the policies.

Development of the Revised Policies

E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (86 FR 7037, January 20, 2021), subsequently rescinded E.O. 13783 and called for an immediate review of agency actions taken between January 20, 2017, and January 20, 2021. Consistent with E.O. 13990, the Service evaluated whether to revise and reissue versions of the mitigation policies. The Service considered input we received during three separate public comment periods related to the 2016 mitigation policies. The initial public comment periods solicited input on the proposed revisions to the Mitigation Policy (81 FR 12380, March 8, 2016), and on the draft ESA Compensatory Mitigation Policy (81 FR 61031, September 2, 2016). We later requested additional public comment on the mitigation planning goal within both mitigation policies that had already been finalized (82 FR 51382, November 6, 2017). The documents, comments, and process related to prior revisions are not summarized here, but may be viewed within docket number FWS–HQ–ES–2015–0126 (mitigation) and docket number FWS–HQ–ES–2015–0165 (compensatory mitigation) on *https://www.regulations.gov.*

One of the main concerns with the 2016 policies was the inclusion of a mitigation planning goal of net conservation gain. Based on public comments, changes in Executive Orders, and policy considerations, the Service has removed reference to a mitigation planning goal of net conservation gain from both policies. We have also added information clarifying that the Service's mitigation planning goal is to maintain the current status of affected resources (*i.e.,* no net loss) and that the Service's mitigation recommendations and requirements should focus on important, scarce, or sensitive resources and be consistent with applicable statutory authorities and the responsibilities of action proponents.

In the 2018 notice to withdraw the policies, the Service cited concerns regarding inconsistencies between the policies and concepts in the opinions of *Koontz* v. *St. Johns River WMD, Nollan* v. *California Coastal Commission,* and *Dolan* v. *City of Tigard,* which identified appropriate sideboards regarding the links between an action and compensatory mitigation to offset the effects of that action. Those opinions call for an ''essential nexus'' between an action's effects and compensatory mitigation, as well as ensuring that mitigation is proportional to the action's effect. The Service has incorporated those concepts in the revised policies. The Service will implement these mitigation policies in a manner that is consistent with the *Koontz* case and any other relevant court decisions. Specifically, we have added ''nexus and proportionality'' as a fundamental mitigation principle for both policies to reinforce that appropriate mitigation measures must have a clear connection with the anticipated effects of the action and be commensurate with the scale and nature of those effects.

In light of the rescission of E.O. 13783, the changes to the policies described above, and the need for the Service to have modern mitigation policies, we again finalize the revised Mitigation Policy and the ESA Compensatory Mitigation Policy.

The Mitigation Policy and ESA Compensatory Mitigation Policy are non-binding, do not establish legally binding rules, and are internal Service policies intended only to improve the internal management of the Service.

National Environmental Policy Act

We have analyzed the final revised policies in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). Issuances of policies, directives, regulations, and guidelines are actions that may generally be categorically excluded under NEPA (43 CFR 46.210(i)). The policies fit within this category and are therefore excluded from further analysis.

Authority

The multiple authorities for this action include the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–667(e)); and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–10341 Filed 5–12–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_UT_FRN_MO4500170254]

Notice of Proposed Withdrawal and Public Meeting, Utah

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of proposed withdrawal.

SUMMARY: At the request of the Bureau of Land Management (BLM), the Secretary of the Interior proposes to withdraw approximately 170,429 acres of public lands and interests in lands from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the U.S. mining laws; operation of the mineral and geothermal leasing laws; and disposal under the mineral materials laws, subject to valid existing rights. The withdrawal is proposed for a period of five years to maintain the status quo while the Department of the Interior, the State of Utah, and the State of Utah School and Institutional Trust Lands Administration (SITLA) consider a potential land exchange. Subject to valid existing rights, publication of this notice in the **Federal Register** segregates the lands for two years from the date of publication unless the segregative effect is terminated sooner. This notice also initiates a 90-day public comment period on the proposed withdrawal. A notice for public meeting(s) regarding the proposed withdrawal will be announced separately in the **Federal Register**, in at least one newspaper having general circulation, and on the agency website at least 30 days before the meeting(s).

DATES: Comments regarding this proposed withdrawal must be received by August 14, 2023.

ADDRESSES: All comments should be sent to Mary Higgins, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345.

A map and other information related to the proposed withdrawal are available at the Bureau of Land Management Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345. Details are also available on the project ePlanning website: *https://eplanning.blm.gov/eplanning-ui/home*.

FOR FURTHER INFORMATION CONTACT: Mary Higgins, BLM Utah State Office, (801) 539–4105, or *mhiggins@blm.gov,* during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has filed a withdrawal petition and application requesting that the Secretary of the Interior withdraw, subject to valid existing rights, the public lands and interests in lands (excluding lands with Federally owned fractional mineral interests) described below from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the U.S. mining laws; operation of the mineral and geothermal leasing laws; and disposal under the mineral materials laws, for five years. A withdrawal would maintain the status quo on public land and interests in lands described below while the Department of the Interior, the State of Utah, and SITLA consider a potential land exchange to transfer certain state-administered lands inside the Bears Ears National Monument, and other parcels across the State, for other Federal lands administered by the BLM across Utah.

The legal description for the public lands and interest in lands proposed for withdrawal is as follows:

Salt Lake Meridian, Utah

T. 11 N., R. 5 E.,
Sec. 9, NE¼SE¼, S½NW¼SE¼, and S½SE¼;
Sec. 10, S½SW¼ and SE¼;
Sec. 11, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 14.
T. 5 S., R. 1 W.,
Sec. 31, lot 7, SE¼SW¼, and SW¼SE¼.
T. 6 S., R. 1 W.,
Sec. 6, lots 1, 2, and SE¼NE¼.
T. 7 S., R. 1 W.,
Sec. 5, lots 4, 5, and W½SW¼;
Sec. 6, lot 1, SE¼NE¼, and E½SE¼.
T. 19 S., R. 1 W.,
Sec. 21, lots 1 thru 4, E½NW¼, E½SW¼, and W½SE¼;
Sec. 27, lot 1;
Sec. 28, lots 1 thru 4, W½NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 33;
Sec. 34, lots 1 thru 5.
T. 20 S., R. 1 W.,
Secs. 3 and 10;
Sec. 14, W½NW¼ and SW¼SW¼;
Sec. 15.
T. 20 S., R. 1½ W.,
Sec. 1.
T. 9 S., R. 2 W.,
Sec. 1, lots 3 and 4, S½NW¼, and SW¼;
Sec. 12, SW¼;
Sec. 13, NW¼;
Sec. 24;
Sec. 25, lots 1 thru 4, and E½NW¼.
T. 21 S., R. 2 W.,
Sec. 1.
T. 22 S., R. 2 W.,
Sec. 22, S½;
Sec. 23, S½;
Sec. 26, N½NE¼;
Sec. 27, NW¼NE¼, N½NW¼, and SW¼SW¼;
Sec. 28, SE¼SE¼;
Sec. 33, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 34, N½NW¼.
T. 23 S., R. 2 W.,
Sec. 5.
T. 24 S., R. 2 W.,
Sec. 19, lots 3 and 4, SE¼NE¼, E½SW¼, and SE¼;
Sec. 20, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 21, lots 1 thru 3, lots 5 thru 8, and W½;
Sec. 29, lots 1 thru 6, NW¼NE¼, NW¼, and S½SE¼;
Sec. 30, lots 1 thru 4, NE¼, E½NW¼, E½SW¼, N½SE¼, and SW¼SE¼.
T. 36 S., R. 3 W.,
Sec. 6, E½SE¼SE¼SW¼, SW¼SE¼SE¼SW¼, S½SE¼NE¼SE¼, SE¼SW¼NE¼SE¼, S½SW¼SE¼, and SE¼SE¼;
Sec. 7, lots 1 and 2.
T. 6 S., R. 4 W.,
Sec. 31, lots 5 thru 8, NE¼NE¼, W½NE¼, E½NW¼, E½SW¼, and W½SE¼.
T. 7 S., R. 4 W.,
Sec. 5, lots 1 thru 4, S½NE¼ and S½NW¼.
T. 5 S., R. 5 W.,
Sec. 11, SW¼NW¼ and NW¼SW¼.
T. 11 S., R. 5 W.,
Sec. 33, lots 6, 7, 11 thru 16, and S½.
T. 15 S., R. 5 W.,
Sec. 35, NE¼SW¼.
T. 44 S., R. 5 W.,
Sec. 3, SE¼SW¼;
Sec. 4, SW¼SW¼;
Sec. 8;
Sec. 9, lot 8;
Sec. 10, lots 1 thru 4, and N½NW¼.
T. 16 S., R. 6 W.,
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;
Secs. 5, 8, and 9;
Sec. 10, S½;
Secs. 15 and 17;
Sec. 18, lots 1 thru 4, E½, SE¼NW¼, and E½SW¼;
Secs. 19 and 20;
Sec. 21, N½, SW¼, N½SE¼, N½SW¼SE¼, W½SW¼SW¼SE¼, and E½SE¼SE¼SE¼;
Sec. 22;
Sec. 29, N½NE¼, N½NW¼, and SW¼NW¼;
Sec. 30, lots 1 and 2, NE¼, and W½NW¼.
T. 19 S., R. 6 W.,
Secs. 17, 18, and 19;
Sec. 20, N½, N½SW½, and N½SE¼;
Sec. 21, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 27, NW¼NW¼, S½NW¼, and S½;
Sec. 28, E½;
Sec. 30, lots 1 thru 4, NW¼NE¼, E½NW¼, NE¼SW¼, and W½SE¼SW¼;
Sec. 31, lots 1 thru 4 and W½NE¼NW¼;
Sec. 33, E½;
Sec. 34, N½ and W½SW¼.
T. 44 S., R. 6 W.,
Sec. 9, lots 5 and 6.
Sec. 10, lot 9, that portion lying south and west of Kaneplex Dr.
T. 17 S., R. 7 W.,
Sec. 10, NE¼SW¼.
T. 19 S., R. 7 W.,
Sec. 13, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 20, SE¼NE¼ and E½SE¼;
Sec. 21, S½NW¼;
Sec. 22, S½NW¼, NE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 24, SE¼;
Sec. 25, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 26, W½NW¼, N½SW¼, and N½SE¼;
Sec. 27, E½NE¼;
Sec. 29, NE¼ and NW¼SE¼;
Sec. 32, W½NE¼ and W½SE¼.
T. 20 S., R. 7 W.,
Sec. 1, lots 1 thru 4;
Sec. 5, lot 2, SW¼NE¼, SE¼SW¼, and W½SE¼;
Sec. 6, lot 7, SE¼SW¼, and SW¼SE¼;
Sec. 7, N½NE¼ and NE¼NW¼;
Sec. 8, N½NW¼.
T. 29 S., R. 7 W.,
Sec. 33, NW¼SE¼.
T. 32 S., R. 7 W.,
Sec. 7, lot 4;
Sec. 18, lot 1.
T. 15 S., R. 8 W.,
Sec. 17;
Sec. 18, E½NE¼, E½SE¼, and SW¼SE¼;
Sec. 19, NE¼;
Sec. 20, N½;
Sec. 21, N½.
T. 19 S., R. 8 W.,
Sec. 22, S½NE¼, S½NW¼, and S½;
Sec. 26, NW¼SW¼;
Sec. 27, N½, SW¼, NE¼SE¼, and S½SE¼;

Sec. 28, S½NE¼, S½NW¼, and S½;
Sec. 34, E½ and SE¼SW¼;
Sec. 35, S½NW¼, N½SW¼, and SE¼SE¼;
Sec. 36, SW¼SW¼.
T. 20 S., R. 8 W.,
Sec. 1, lots 3 and 4, SW¼NE¼, SE¼NW¼, N½SE¼, and SE¼SE¼.
T. 34 S., R. 9 W.,
Sec. 19, lots 1 thru 4, E½NW¼, and E½SW¼;
Sec. 30, lots 1 thru 4, NW¼NE¼, E½NW¼, and NE¼SW¼;
Sec. 31, lot 1.
T. 15 S., R. 10 W.,
Sec. 7, lots 3 and 4, E½SW¼, and SE¼.
T. 24 S., R. 10 W.,
Sec. 20, NW¼;
Sec. 21, W½NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 28, NE¼ and W½SE¼.
T. 26 S., R. 10 W.,
Sec. 21, W½;
Sec. 28, W½.
T. 27 S., R. 10 W.,
Sec. 20, N½NE¼, W½NW¼, and SW¼;
Sec. 21, N½NW¼, SE¼NW¼, and E½SW¼;
Sec. 28, E½NW¼ and S½SW¼;
Sec. 29, W½;
Sec. 33, NE¼, E½NW¼, E½SW¼, N½SE¼, and SW¼SE¼.
T. 34 S., R. 10 W.,
Sec. 24, S½NE¼, and SE¼;
Sec. 25, E½.
T. 35 S., R. 10 W.,
Sec. 19, lots 6 thru 9, and NE¼NW¼.
T. 24 S., R. 12 W.,
Sec. 15.
T. 40 S., R. 13 W.,
Sec. 22, NW¼SW¼;
Sec. 28, E½NE¼ and SW¼NE¼.
T. 41 S., R. 13 W.,
Sec. 9, lots 8 thru 10, E½NE¼, and W½SE¼;
Sec. 10, SE¼SW¼;
Sec. 15, NW¼, N½SW¼, and SW¼SW¼.
T. 11 S., R. 14 W.,
Sec. 7, E½SE¼;
Sec. 8, unsurveyed;
Secs. 9, unsurveyed;
Sec. 17, excepting patented mining claims, unsurveyed;
Sec. 18, excepting patented mining claims, unsurveyed.
T. 43 S., R. 14 W.,
Sec. 20, NW¼SW¼, S½SW¼, and S½SE¼;
Sec. 23, S½SW¼;
Secs. 26, 27, and 28;
Sec. 29, NE¼, NE¼NW¼, and NE¼SE¼.
T. 31 S., R. 15 W.,
Sec. 31.
T. 32 S., R. 15 W.,
Sec. 6.
T. 32 S., R. 16 W.,
Sec. 1.
T. 40 S., R. 17 W.,
Sec. 31, lots 2 and 3, NE¼, and SE¼NW¼.
T. 41 S., R. 17 W.,
Sec. 5, W½SE¼;
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, W½NE¼, SE¼NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 17, W½NE¼, SE¼NW¼, NE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 18, lots 1 thru 4.
T. 39 S., R. 18 W.,
Sec. 8, S½SW¼ and S½SE¼;
Sec. 9, S½SW¼ and S½SE¼;
Sec. 10, S½SW¼;
Sec. 15, SW¼NE¼, NW¼, and S½;
Sec. 16, NE¼, E½NW¼, and S½;
Sec. 17, lots 1, 3, and 4, N½NE¼, SW¼NE¼, NW¼, and SW¼, excepting M.S. No. 6283, M.S. No. 6422, M.S. No. 6557, and M.S. No. 6768;
Sec. 18, NE¼, SE¼NW¼, E½SW¼, and SE¼ excepting M.S. No. 6283;
Sec. 19, excepting M.S. No. 6493, M.S. No. 6557, M.S. No. 6768, and M.S. No. 6698;
Sec. 20, excepting patented M.S. No. 6557, M.S. No. 6768, M.S. No. 6422, M.S. No. 6283, M.S. No. 6454;
Sec. 21, excepting patented M.S. No. 6283;
Sec. 22;
Sec. 23, W½SW¼;
Sec. 26, NW¼NW¼;
Sec. 27, N½NE¼ and N½NW¼;
Sec. 28, N½NE¼ and N½NW¼;
Sec. 29, N½, N½SW¼, and N½SE¼;
Sec. 30, lots 1 thru 4, NE¼, E½NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 31, lot 1, NW¼NE¼, and NE¼NW¼.
T. 40 S., R. 18 W.,
Sec. 19, lots 3, 4, and SE¼SW¼;
Sec. 29, SW¼;
Sec. 30, NW¼NE¼, S½NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 33, SW¼ and SW¼SE¼.
T. 41 S., R. 18 W.,
Sec. 1, lots 3 thru 5;
Sec. 3, lots 4 thru 7, lots 9 thru 11, and NE¼SE¼;
Sec. 4, lots 1, 2, and 8;
Sec. 11, N½NE¼ and SE¼NE¼;
Sec. 12, NW¼NW¼, S½NW¼, NE¼SW¼, and SE¼;
Sec. 13, E½NE¼ and E½SE¼;
T. 1 S., R. 19 W.,
Sec. 8, E½NE¼.
T. 39 S., R. 19 W.,
Sec. 23, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 24, S½NE¼, S½NW¼, and S½;
Secs. 25 and 26;
Sec. 27, E½ and E½SW¼;
Sec. 34, N½NE¼, SE¼NE¼, NE¼NW¼, and E½SE¼;
Sec. 35;
Sec. 36, N½ and N½SE¼.
T. 40 S., R. 19 W.,
Sec. 1, lots 3 thru 6, S½NW¼, and SW¼;
Sec. 3, SE¼SE¼;
Sec. 10, N½NE¼ and SE¼SE¼;
Sec. 11, NW¼NE¼, NW¼, and SW¼;
Sec. 13, SW¼SW¼;
Sec. 14, W½ and SE¼;
Sec. 15;
Sec. 24, NE¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, and NE¼SE¼.
T. 33 S., R. 20 W.,
Sec. 35, lots 1 thru 4, E½NE¼, and E½SE¼;
Sec. 36, lots 1 and 2.
T. 34 S., R. 20 W.,
Sec. 1, lots 3 and 4, S½NW¼, and SW¼.
T. 27 S., R. 3 E.,
Sec. 3, lot 1, SE¼NE¼, and SE¼;
Sec. 10, lots 1 thru 4, E½NE¼, E½NW¼, SW¼, and E½SE¼;
Secs. 11 and 14;
Sec. 15, lots 1 and 2, E½NE¼, NE¼NW¼, S½NW¼, and S½.
T. 3 S., R. 4 E.,
Sec. 3, lots 8, 15, and 18;
Sec. 4, lot 14.
T. 29 S., R. 4 E.,
Sec. 23, N½NE¼ and SE¼NE¼.
T. 23 S., R. 6 E.,
Secs. 10 and 11.
T. 19 S., R. 7 E.,
Sec. 13, E½NE¼.
T. 19 S., R. 8 E.,
Sec. 7, SW¼SE¼;
Sec. 17, NW¼NW¼ and E½SW¼;
Sec. 18, lots 1, 2, W½NE¼, and E½NW¼.
T. 11 S., R. 9 E.,
Sec. 28, SW¼NW¼ and NW¼SE¼.
T. 11 S., R. 10 E.,
Sec. 29, W½NW¼ and SW¼;
Sec. 30, NE¼NE¼, S½NE¼, and SE¼;
Sec. 31, N½NE¼ and SW¼NE¼;
Sec. 33, N½NW¼ and SW¼NW¼.
T. 14 S., R. 11 E.,
Secs. 20 and 21;
Sec. 28, W½NE¼, NE¼NW¼, SE¼SW¼, and NW¼SE¼;
Sec. 29, W½NW¼, SW¼, and W½SE¼;
Sec. 30, lots 1 and 2, E½, and E½NW¼;
Sec. 31, NE¼ and N½SE¼.
T. 34 S., R. 11 E.,
Sec. 28, S½, unsurveyed;
Sec. 33;
Sec. 34, W½, unsurveyed.
T. 35 S., R. 11 E.,
Sec. 1, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3;
Secs. 4 and 5, secs. 8 thru 11, and sec. 17, unsurveyed;
Sec. 21, N½, unsurveyed.
T. 15 S., R. 12 E.,
Sec. 28;
Sec. 33, N½, SW¼, N½SE¼, and SW¼SE¼.
T. 16 S., R. 12 E.,
Secs. 15, 21, and 22.
T. 34 S., R. 12 E.,
Sec. 31, lots 1 thru 4, N½NE¼, SW¼NE¼, E½NW¼, and NE¼SW¼.
T. 38 S., R. 12 E.,
Sec. 35, lots 1 and 2, lots 5 thru 9, E½NE¼, and SE¼;
Sec. 36.
T. 39 S., R. 12 E.,
Sec. 1, unsurveyed;
Sec. 3, lots 5 thru 8 and S½SE¼.
T. 15 S., R. 13 E.,
Sec. 11, SE¼;
Sec. 12, S½NE¼ and S½;
Sec. 13;
Sec. 14, N½NE¼, SE¼NE¼, SE¼SW¼, and S½SE¼;
Sec. 23;
Sec. 24, W½.
T. 19 S., R. 13 E.,
Secs. 1, 12, and 13.
T. 26 S., R. 13 E.,
Sec. 22.
T. 39 S., R. 13 E.,
Sec. 6, S½NE¼, NW¼, and S½, unsurveyed.
T. 13 S., R. 14 E.,
Sec. 26, W½ and NW¼SE¼;
Sec. 27, N½NE¼, NW¼, and E½SW¼;
Sec. 33, S½NE¼NE¼, S½NE¼, S½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;

Sec. 34, W½NW¼ and SW¼.
T. 14 S., R. 14 E.,
Secs. 11 thru 14;
Sec. 24, NW¼NE¼.
T. 19 S., R. 14 E.,
Secs. 6, 7, and 18.
T. 21 S., R. 14 E.,
Sec. 15, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, W½NE¼, W½, and W½SE¼;
Sec. 27, W½NE¼, W½, and W½SE¼.
T. 25 S., R. 14 E.,
Secs. 22 and 27.
T. 27 S., R. 14 E.,
Sec. 5.
T. 21 S., R. 15 E.,
Secs. 1, 3, and 4;
Sec. 5, lots 1 thru 19, NW¼SW¼, S½SW¼, and NE¼SE¼;
Sec. 10, NW¼NE¼, N½NW¼, and SW¼SW¼;
Sec. 11, N½NE¼ and NE¼NW¼;
Sec. 12, lots 1 thru 4, W½NE¼, N½NW¼, and NW¼SE¼;
Sec. 13, lots 1 thru 4, SW¼NE¼, NW¼NW¼, S½NW¼, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 14, S½NE¼, S½NW¼, and S½;
Sec. 22, SE¼NE¼ and S½;
Sec. 27, N½NE¼ and N½NW¼.
T. 21 S., R. 16 E.,
Sec. 5, NW¼SW¼;
Sec. 6, lots 5 and 6, lots 11 thru 13, and lots 19 thru 22, NE¼SW¼, and N½SE¼;
Sec. 7, lots 3 and 4, S½NE¼, SE¼NW¼, E½SW¼, and NE¼SE¼;
Sec. 8, SW¼NW¼.
T. 21 S., R. 17 E.,
Sec. 17, SW¼ and N½SE¼;
Sec. 18, lots 3 and 4, E½SW¼, and SE¼;
Sec. 19, lot 1, N½NE¼, and NE¼NW¼;
Sec. 20, E½ and NW¼;
Sec. 21;
Sec. 22, N½NE¼, SW¼NW¼, NW¼SW¼, S½SW¼, and S½SE¼;
Secs. 26 and 27;
Sec. 28, NE¼.
T. 22 S., R. 17 E.,
Secs. 21, 22, and 35.
T. 23 S., R. 17 E.,
Secs. 3 thru 5, and sec. 8;
Sec. 9, lots 1 thru 4, N½, W½SW¼, and N½SE¼;
Sec. 10, lots 1 thru 4, N½, N½SW¼, and N½SE¼;
Sec. 15, lots 1 thru 5, SE¼NW¼, and S½;
Secs. 17 and 18.
T. 25 S., R. 19 E.,
Sec. 35.
T. 26 S., R. 19 E.,
Sec. 1, unsurveyed.
T. 26 S., R. 20 E.,
Sec. 20, W½NE¼, W½, and W½SE¼.
T. 40 S., R. 21 E.,
Sec. 25, lot 6.
T. 26 S., R. 22 E.,
Sec. 6, lot 3.
T. 29 S., R. 22 E.,
Sec. 21, N½NE¼, NW¼, and S½;
Sec. 28.
T. 36 S., R. 22 E.,
Sec. 12, lots 4 and 5, and NW¼SW¼;
Sec. 13, lots 1 thru 9, E½NE¼, and E½SE¼;
Sec. 21, lots 1 thru 4, E½NW¼, and NW¼NW¼;
Sec. 24;
Sec. 25, N½ and NE¼SE¼;
Sec. 28, SW¼NW¼, NW¼SW¼, and S½SW¼;
Sec. 33, N½, SW¼, and W½SE¼.
T. 37 S., R. 22 E.,
Sec. 3, lot 4;
Sec. 4, lots 1 thru 4, SW¼NE¼, S½NW¼, SW¼, W½NW¼SE¼, and W½SW¼SE¼;
Secs. 7 and 8;
Sec. 17, N½;
Sec. 18.
T. 40 S., R. 22 E.,
Sec. 29, lots 9 thru 13, and NW¼NW¼;
Sec. 30, lot 9, lots 12 thru 15, N½NE¼NE¼, N½SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, N½SW¼NW¼NE¼, and N½SE¼NW¼NE¼;
Sec. 31, lot 3.
T. 24 S., R. 23 E.,
Sec. 20, lot 13;
Sec. 29, N½NW¼.
T. 27 S., R. 23 E.,
Sec. 20, NE¼, E½NW¼, and W½SW¼;
Sec. 21, N½;
Sec. 22, W½NE¼, W½, NW¼SE¼, and S½SE¼;
Sec. 29, W½NW¼.
T. 30 S., R. 23 E.,
Sec. 1;
Sec. 10;
Sec. 11, lots 1 thru 4, W½NE¼, N½NW¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 12, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 13, N½, NE¼SW¼, and SE¼;
Secs. 14 and 15, secs. 22 thru 29, and secs. 33 thru 35.
T. 31 S., R. 23 E.,
Sec. 3, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Secs. 4, 9, and 10.
T. 32 S., R. 23 E.,
Sec. 11;
Sec. 12, lots 1 and 2, W½NE¼, W½, and W½SE¼;
Sec. 17;
Sec. 18, SE¼NE¼ and SE¼.
T. 36 S., R. 23 E.,
Sec. 5, lot 4;
Sec. 6, lots 1 thru 3, SE¼SW¼, and SW¼SE¼;
Sec. 7, W½NE¼ and SE¼NE¼;
Sec. 8, NW¼NW¼.
T. 22 S., R. 24 E.,
Sec. 3, lots 4 and 5, and SW¼NW¼;
Sec. 4, lots 1 thru 3.
T. 28 S., R. 24 E.,
Sec. 34, N½NE¼, SW¼NE¼, NW¼, N½SW¼, and SW¼SW¼;
Sec. 35, E½, E½NW¼, E½SW¼, and NW¼SW¼.
T. 29 S., R. 24 E.,
Sec. 1;
Sec. 3, lots 3 and 4, SW¼NE¼, and S½NW¼;
Sec. 25.
T. 30 S., R. 24 E.,
Sec. 10, excepting patented mining claims;
Sec. 11, NW¼NW¼, W½NE¼NW¼, S½NW¼, SW¼, and W½SW¼SE¼, excepting patented mining claims.
Secs. 25 thru 31, and secs. 33 and 34;
Sec. 35, NE¼, W½NW¼, and S½.
T. 32 S., R. 24 E.,
Sec. 1;
Sec. 12, N½, SW¼ and NW¼SE¼;
Sec. 13, N½NW¼ and SW¼NW¼;
Sec. 14, E½ and N½NW¼.
T. 29 S., R. 25 E.,
Secs. 6 and 31.
T. 30 S., R. 25 E.,
Sec. 15, SW¼NW¼, NW¼SW¼, and S½SW¼;
Secs. 17, 18, 20, and 21;
Sec. 22, NW¼ and S½;
Sec. 27;
Sec. 28, N½, N½SW¼, N½SE¼, and SE¼SE¼;
Sec. 29.
T. 32 S., R. 25 E.,
Sec. 1, SE¼SW¼;
Sec. 3, SE¼;
Sec. 4, lots 3 thru 6, lots 12 and 13, SW¼, and S½SE¼;
Sec. 5, lots 1 thru 16, NE¼SW¼, and SE¼;
Sec. 6, lots 1 thru 14 and lots 16 thru 18;
Sec. 7, lot 4, E½SW¼, and SE¼;
Sec. 8, E½NE¼, S½SW¼, E½SE¼, and SW¼SE¼;
Sec. 9;
Sec. 10, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 12, SW¼NE¼;
Sec. 14, SW¼NW¼ and SW¼;
Sec. 15;
Sec. 17, NE¼, E½NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 21, NE¼;
Sec. 22, N½ and SE¼;
Sec. 23, NW¼NE¼ and N½SE¼;
Sec. 24, S½NE¼;
Sec. 26, W½NE¼, NW¼, and SW¼;
Sec. 27, SE¼NE¼, N½NW¼, SW¼NW¼, W½SW¼, and E½SE¼;
Sec. 29, N½;
Sec. 34, N½;
Sec. 35, N½.
T. 21 S., R. 26 E.,
Sec. 31, N½NE¼, N½NW¼, SW¼NW¼, and SW¼.
T. 26 S., R. 26 E.,
Sec. 31, lots 1 and 2.
T. 32 S., R. 26 E.,
Sec. 19, N½SE¼.
T. 33 S., R. 26 E.,
Sec. 9, W½SW¼.

The areas described aggregate approximately 170,429 acres.

The Secretary of the Interior has approved the petition to file a withdrawal application. The Secretary's approval constitutes her proposal to withdraw and segregate the subject lands (43 CFR 2310.1–3(e)).

There are no suitable alternative sites, and no water rights will be needed for this proposed withdrawal.

For a period until August 14, 2023, persons who wish to submit comments, suggestions, or objections related to the withdrawal application may present their views in writing to the individual listed in the **ADDRESSES** section earlier. Comments will be available for public review by appointment at the BLM, Utah State Office, 440 West 200 South,

Suite 500, Salt Lake City, Utah 84101–1345, during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware your entire comment—including personal identifying information—may be made publicly available at any time. You may ask the BLM in your comment to withhold your personal identifying information from public review, but we cannot guarantee we will be able to do so.

For a period until May 15, 2025, subject to valid existing rights, the BLM-administered lands and interests in lands described in this notice will be segregated from all forms of entry, appropriation, and disposal under the public land laws; location and entry under the U.S. mining laws; operation of the mineral and geothermal leasing laws; and disposal under the mineral materials laws, unless the segregative effect is terminated sooner in accordance with 43 CFR 2310.2(a). Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that will not jeopardize the potential land exchange and are consistent with the relevant Utah Resource Management Plans, as amended, may be allowed with the approval of the authorized officer during the segregation period.

This proposed withdrawal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Gregory Sheehan,

State Director, Utah.

[FR Doc. 2023–10274 Filed 5–12–23; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NHAP–NPS0035092; PPWOCRADI0, PCU00RP14.R50000; (222) OMB Control Number 1024–0287]

Agency Information Collection Activities; National Heritage Areas Program Annual Reporting Forms

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before July 14, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) to NPS Information Collection Clearance Officer (ADIR–ICCO), National Park Service, *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number 1024–0287 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR by mail, contact Elizabeth Vehmeyer, Assistant Coordinator, National Heritage Areas Program, National Park Service, 1849 C Street NW, Mail Stop 7508, Washington, DC 20240 (mail); or at *elizabeth_vehmeyer@nps.gov* (email) or (202) 354–2215 (telephone). Please reference Office of Management and Budget (OMB) Control Number 1024–0287 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

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

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: National Heritage Areas (NHAs), as authorized by the Historic Sites Act of 1935, as amended (54 U.S.C. Ch. 3201) are places where natural, cultural, and historic resources combine to form a cohesive, nationally important landscape. The NHA program includes 49 heritage areas and is administered by NPS coordinators in Washington, DC, and six regional offices—Anchorage, San Francisco, Denver, Omaha, Philadelphia, and Atlanta—as well as local park unit staff.

The NPS uses the following forms to monitor the progress of each heritage area on the implementation of management plans and performance goals:

- 10–320 *Annual Program Report—Part I Funding Report,* NPS NHA Program Office uses the information collected to allocate funds, prepare the annual NPS Budget Justification, and respond to directives from Congress.
- 10–321 *Annual Program Report—Part II Progress Report,* NPS NHA Program Office and regional program offices use the information collected to track each heritage area management or coordinating entity's progress on management plan implementation. The NPS uses the information in the annual program reports and publications to inform individual heritage area evaluations.

Title of Collection: National Heritage Areas Program Annual Reporting Forms.

OMB Control Number: 1024–0287.

Form Number: 10–320 and 10–321.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: NHA Coordinating Entities: Not-for-profit

entities; Federal Commissions; Institutions of Higher Education; State and local governments.

Total Estimated Number of Annual Responses: 108.

Estimated Completion Time per Response: Varies from 10 to 40 hours, depending on activity and form type.

Total Estimated Number of Annual Burden Hours: 2,700 hours.

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

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2023–10307 Filed 5–12–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–709 (Fifth Review)]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on seamless carbon and alloy steel standard, line, and pressure pipe from Germany would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: April 10, 2023.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 10, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 110, January 3, 2023) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on July 12, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 20, 2023, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 20, 2023. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–10323 Filed 5–12–23; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted on behalf of Vallourec Star, LP, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–579–580 and 731–TA–1369–1372 (Review)]

Fine Denier Polyester Staple Fiber From China, India, South Korea, and Taiwan; Notice of Commission Determinations To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of

1930 to determine whether revocation of the countervailing duty orders on fine denier polyester staple fiber from China and India and the antidumping duty orders on fine denier polyester staple fiber from China, India, South Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: May 8, 2023.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On May 8, 2023, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses from India to its notice of institution (88 FR 6790, February 1, 2023) were adequate and determined to conduct full reviews of the orders on imports from India. The Commission also found that the respondent interested party group responses from China, South Korea, and Taiwan were inadequate but determined to conduct full reviews of the orders on imports from those countries in order to promote administrative efficiency in light of its determinations to conduct full reviews of the orders with respect to India. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 10, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–10293 Filed 5–12–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. ASSA ABLOY AB, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *ASSA ABLOY AB, et al.,* Civil Action No. 22–2791–ACR. On September 15, 2022, the United States filed a Complaint alleging that ASSA ABLOY AB's proposed acquisition of the Hardware and Home Improvement division of Spectrum Brands Holdings, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on May 5, 2023, requires ASSA ABLOY to divest its EMTEK-branded business, its Schaub-branded business, its August-branded business, and its Yale-branded multifamily and residential smart lock business in the United States and Canada. It also requires ASSA ABLOY and Spectrum Brands to submit to oversight by a monitoring trustee, who will have the power and authority to monitor ASSA ABLOY's and Spectrum Brands' compliance with the Asset Preservation Stipulation and Order and proposed Final Judgment.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (email address: *ATRJudgmentCompliance@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v., *ASSA ABLOY AB, Klarabergsviadukten 90, Stockholm, Sweden SE–111 64, and, Spectrum Brands Holdings, Inc., 3001 Deming Way, Middleton, WI 53562,* Defendants.

Complaint

The United States brings this antitrust lawsuit to stop Defendant ASSA ABLOY AB (''ASSA ABLOY'') from acquiring a division of Defendant Spectrum Brands Holdings, Inc. (''Spectrum'')—ASSA ABLOY's largest competitor in supplying the $2.4 billion residential door hardware industry in the United States. Foreshadowing the anticompetitive effects of the proposed transaction, ASSA ABLOY internally predicted that, as a result of the transaction, one of its residential door hardware brands would be ''in a better pricing negotiation position and can expect to increase prices.''

The Defendants are close head-to-head competitors whose rivalry has benefitted consumers and who are part of a trio that today dominates the concentrated U.S. residential door hardware industry. But this entrenched position was not enough for ASSA ABLOY, whose CEO insisted just last year that the company ''ha[s] to make sure we stop or buy'' competitors before they ''can grow.'' For ASSA ABLOY, which has a long history of buying firms in the industry, purchasing Spectrum's Hardware and Home Improvement division (''Spectrum HHI'') is the latest step in its attempts to advance the trend toward concentration in the residential door hardware industry.

The proposed transaction, which would leave American consumers with only two significant producers of residential door hardware, violates the Clayton Act in at least two separate antitrust markets in the United States: (1) premium mechanical door hardware

and (2) smart locks, which are wirelessly connected digital door locks. In the premium mechanical door hardware market, the proposed transaction would be a merger to near-monopoly, where the merged firm would account for around 65% of sales, becoming more than ten times larger than its next-largest competitor. In the market for smart locks, the proposed transaction would cut off competition in a fast-growing door hardware segment, leaving the merged firm with more than a 50% share and only one remaining meaningful competitor—an effective duopoly. In both of these relevant markets, the proposed transaction easily surpasses the thresholds that trigger a presumptive violation of the Clayton Act.

Historically, competition between Defendants to sell residential door hardware to showrooms, home improvement stores, builders, online retailers, home security companies, and other customers has generated lower prices, higher quality, exciting innovations, and superior customer service. As outlined in detail below, the head-to-head competition between the Defendants is significant. They regularly reduce price to win business from each other and respond to each other's competitive initiatives with innovation and better offerings. For example, one of Spectrum's top ''strategic imperatives'' in 2021 was to invest heavily in better service and pricing for its premium mechanical door hardware brands (Baldwin Estate and Baldwin Reserve) in order to recapture market share from its ''chief competitor,'' ASSA ABLOY's EMTEK brand. Similarly, ASSA ABLOY has recently invested in a new lineup of smart locks designed to ''take [a half] bay'' (*i.e.,* take shelf space) from Spectrum's Kwikset brand and its other large competitor in major home improvement stores. The proposed transaction would eliminate those benefits altogether.

Acknowledging the harm that their proposed transaction would cause to competition, the Defendants have offered to sell off selected portions of ASSA ABLOY's globally integrated business. But offering a complex divestiture of carved-out assets from a globally-integrated business in an attempt to remedy a deal that presents a massive competitive problem would leave American consumers to bear the significant risks that the divestiture would fail to preserve the intensity of existing competition. Regardless of who the unknown buyer turns out to be, such a hazardous corporate restructuring would be inadequate to remedy the harms of Defendants' anticompetitive deal. The only remedy that will preserve competition is to stop the proposed transaction outright. Therefore, the United States of America brings this lawsuit to enjoin ASSA ABLOY's proposed acquisition of Spectrum HHI because it violates Section 7 of the Clayton Act, 15 U.S.C. 18. The United States alleges as follows:

Introduction

1. American homeowners and renters routinely rely on residential door hardware to meet their most basic privacy and security needs. Because virtually every door in every home in the United States has door hardware on it, about $2.4 billion of residential door hardware is sold in the United States each year.

2. The residential door hardware industry in the United States is concentrated. Spectrum, which owns the Baldwin and Kwikset brands, and ASSA ABLOY, which owns the August, EMTEK, and Yale brands, are, after many years of competition, the largest and third-largest producers of residential door hardware in the United States, collectively accounting for more than half of sales. Together with the other major supplier, the three largest producers account for about 75% of sales, with the remaining sales attributed to much smaller players.

3. In September 2021, ASSA ABLOY agreed to pay $4.3 billion to acquire Spectrum HHI. If consummated, this transaction would eliminate important head-to-head competition and move the residential door hardware industry ever closer toward monopoly.

4. While the transaction would further consolidate the entire residential door hardware industry, its harm would likely be felt most acutely by customers seeking to purchase two distinct categories of residential door hardware: (1) premium mechanical door hardware and (2) smart locks. Head-to-head competition between Defendants has made these products more responsive to the changing economic, aesthetic, technological, and security demands of American households—lowering prices, fostering innovation, increasing the variety and quality of offerings, and improving customer service. The proposed transaction would end that important competition and deprive American consumers of the benefits of such competition in the future.

5. In premium mechanical door hardware, Defendants are by far the two largest producers and closest rivals in the United States through ASSA ABLOY'S EMTEK brand and Spectrum HHI's Baldwin Estate and Baldwin Reserve brands. Based on information gathered thus far, the Defendants collectively accounted for approximately 65% of sales in 2021. The Defendants are strong and regular competitors in this market, as the market shares would suggest and the Defendants' own documents indicate.

6. In smart locks, Defendants are the two largest producers in the United States, primarily through ASSA ABLOY's August and Yale brands and Spectrum HHI's Kwikset brand. Based on information gathered thus far, they collectively accounted for about 50% of sales in 2021. Defendants have both invested significantly in efforts to win smart lock market share from each other, making them two of the three dominant incumbents in the growing smart lock market that have scale, resources, and access to distribution that dwarf all other competitors. The proposed transaction would consolidate the smart lock market into a duopoly.

7. ASSA ABLOY and Spectrum were keenly aware that their proposed deal presented serious anticompetitive issues as they negotiated which firm would bear the risk of inevitable objections from antitrust enforcers. Spectrum insisted that ASSA ABLOY commit in the purchase agreement to divest assets to try to secure antitrust clearance, but ASSA ABLOY executives were reluctant to make a divestiture commitment because they worried it would ''put [their] future at risk.'' In September 2021, only four days before the transaction was announced, Spectrum's CEO tried to assuage ASSA ABLOY's concerns, suggesting it could have its cake and eat it too—appease antitrust enforcers with a divestiture commitment structured in a way ''where you don't put the assets you want at risk.''

8. Defendants put that strategy into action in the summer of 2022, when they proposed to divest, to an as-yet unidentified buyer, portions of ASSA ABLOY business units that make and sell residential door hardware in the United States. But divesting carved-out assets from the globally integrated business apparatus that made them successful cannot be relied upon to replicate the intensity of competition that exists today between ASSA ABLOY and Spectrum HHI and therefore would be an unacceptable remedy.

9. The proposed transaction violates Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

Defendants and the Proposed Transaction

10. ASSA ABLOY is a publicly traded Swedish stock company headquartered in Stockholm, Sweden. It is a globally

integrated conglomerate that manufactures and sells a wide array of access solutions products—including residential and commercial door hardware, doors, and electronic access control systems. ASSA ABLOY sells residential door hardware in the United States under the August, EMTEK, Sure-Loc, Valli & Valli, and Yale brands. Yale, in particular, is an iconic ''master brand,'' dating back more than 150 years, which ''has strong recognition in residential markets worldwide.'' ASSA ABLOY is the third largest producer of residential door hardware in the United States (including premium mechanical door hardware and smart locks), as well as the largest producer of commercial door hardware in the United States. In 2021, ASSA ABLOY earned revenues of approximately $3.5 billion in the United States and approximately $9.1 billion worldwide.

11. ASSA ABLOY is a creature of corporate consolidation. It was established in 1994 through the merger of Swedish lock maker ASSA AB and Finnish lock maker Abloy Oy. Since then, ASSA ABLOY has been on a decades-long acquisitions spree—buying more than 300 businesses in 27 years, including all of the companies that now constitute ASSA ABLOY's multi-billion-dollar residential door hardware business. It acquired Yale in 1999, EMTEK in 2000, Valli & Valli in 2008, August in 2017, and Sure-Loc in 2021. It also acquired South Korean smart-lock manufacturer iRevo in 2007 and Chinese smart-lock manufacturer Digi in 2014. These acquisitions and others by ASSA ABLOY have increased concentration in the door hardware industry.

12. Spectrum is a publicly-traded Delaware corporation headquartered in Middleton, Wisconsin. It is a diversified, global branded consumer products company with four divisions: (1) Home and Personal Care, (2) Global Pet Care, (3) Home and Garden, and (4) Hardware and Home Improvement. In 2021, Spectrum earned revenues of approximately $3.2 billion in the United States and approximately $4.6 billion worldwide.

13. Spectrum's Hardware and Home Improvement division, referred to herein as ''Spectrum HHI,'' is headquartered in Lake Forest, California. It is the largest producer of residential door hardware in the United States, and it also manufactures and sells commercial door hardware, residential plumbing hardware (*e.g.,* kitchen and bathroom faucets), and builders' hardware. Spectrum HHI sells residential door hardware, including premium mechanical door hardware and smart locks, in the United States under the Baldwin Estate, Baldwin Reserve, Baldwin Prestige, and Kwikset brands, and it also manufactures private-label residential door hardware for third parties. In 2021, Spectrum HHI earned revenues of approximately $1.4 billion in the United States.

14. Spectrum HHI is also the result of decades of consolidation in the residential door hardware industry. Black & Decker (renamed Stanley Black & Decker in 2010) acquired Kwikset in 1989, Baldwin and Weiser (a Canadian residential door hardware company) in 2003, and Taiwanese door-lock manufacturer Tong Lung Metal in 2012, before selling all four companies to Spectrum in 2012 and 2013.

Defendants' Residential Door Hardware Brands Sold in the United States

15. On September 8, 2021, ASSA ABLOY and Spectrum signed an asset and stock purchase agreement under which ASSA ABLOY would acquire Spectrum HHI for approximately $4.3 billion. The post-transaction ASSA ABLOY would be an industry behemoth, with almost $5 billion in annual sales in the United States alone, and it would become the largest producer of residential door hardware in the United States, in addition to already being the largest producer of commercial door hardware in the United States.

Industry Background

16. The proposed transaction involves products—residential door hardware—that Americans use every day to enter, leave, and secure their homes and interior living spaces, such as bedrooms, bathrooms, and home offices.

17. Doors used in a residence are almost always hinged or sliding (*e.g.,* pocket doors). Residential door hardware is the hardware affixed to a residential hinged or sliding door that is used to open, close, or lock the door.

18. Residential door hardware is either (1) mechanical, meaning that it functions only by physical operation at the door (*e.g.,* physically turning a handle or knob and, for exterior doors, using a key), or (2) digital, meaning that it can be operated electronically and, in some cases, remotely.

A. Mechanical Residential Door Hardware

19. Mechanical residential door hardware has interior components (the ''chassis'') and exterior components (the ''trim''). The chassis consists of a latching or locking mechanism and other components. Trim consists of hardware used to operate the latching or locking mechanism—most commonly a knob or lever for the latch and a mechanical turn piece for the lock—and surrounding pieces of decorative hardware. Chassis and trim for residential door hardware are usually purchased together as a set, known as a lock set, but they can also sometimes be purchased separately. The locking mechanism (*e.g.,* deadbolt) is the most common element of a lock set to be purchased separately.

20. Mechanical residential lock sets are sold in a wide variety of functions, hardware types, designs, price points, and materials. Exterior lock sets have a locking function, but many interior lock sets do not. Interior lock sets usually serve one of three different functions: ''passage'' (turn and latch from both sides, no lock), ''privacy'' (turn and latch from both sides, lock with privacy button from inside), or ''dummy'' (no turn, latch, or lock). Exterior lock sets serve what is known as an ''entrance'' function (turn and latch from both sides, keyed locking on exterior, turn-piece locking from interior).

21. Mechanical residential door hardware is sold at retail in the United States through several different channels. Entry level and medium-grade hardware is primarily sold in mass-market retail stores, such as ''big box'' home improvement stores and hardware stores. Premium mechanical door hardware, by contrast, is sold primarily through specialized dealers, such as decorative hardware showrooms. Mechanical residential door hardware is also sold through e-commerce websites, such as *Build.com* and the websites of brick-and-mortar retailers.

Examples of Premium Mechanical Door Hardware

EMTEK (ASSA ABLOY) Lock Set

Baldwin Estate (Spectrum) Entry Set

22. Door hardware used on residences differs in many ways from door hardware used in commercial settings. Residential door hardware is less complex, less costly, and less durable than commercial door hardware. Commercial door hardware also includes several product categories that have no residential analogue, including door closers, exit devices, and electronic access control hardware.

B. Digital Residential Door Hardware

23. Most residential door hardware and essentially all interior residential door hardware is mechanical, but certain American consumers are increasingly selecting exterior residential door hardware that is digital.

24. The primary type of digital door hardware used in a residential setting is a digital door lock, which is a deadbolt that is operated electronically. One type of digital door locks, referred to herein

as ''smart locks,'' can be operated and/or monitored through a wireless connection to another electronic device. The other type of digital door locks (''non-connected locks'') have no wireless connection and are electronically operated via a device physically connected to the deadbolt, such as an electronic keypad. Some digital door locks are sold as a lock set that includes mechanical trim, such as a knob or lever.

Examples of the Two Types of Digital Door Locks

August (ASSA ABLOY)
Wi-Fi Smart Lock and App

Kwikset (Spectrum)
Non-Connected Keypad Door Lock

25. Smart locks make a wireless connection to another device through a variety of technology protocols, primarily including Wi-Fi, Bluetooth, and low-power mesh-network protocols (*e.g.,* Z-Wave, Zigbee, or Thread). The user typically operates the lock from an application on a smart phone or similar device.

26. In the United States, smart locks make up a growing share of residential digital door lock sales and residential door hardware sales generally. In 2021, smart locks accounted for about two-thirds of residential digital door locks sold in the United States, and smart lock sales in the United States have approximately doubled in only three years, growing to more than $420 million in 2021.

27. Digital door locks, including smart locks, are sold at retail in the United States through several different channels, primarily including mass-market retail stores, such as big box home improvement stores, and e-commerce websites, such as Amazon.com. Smart locks are also sold through consumer electronics stores and specialized dealers, such as home security companies and home technology integrators.

C. The Residential Door Hardware Industry in the United States

28. In the United States, about 75% of all residential door hardware sold each year is made by ASSA ABLOY, Spectrum, and their largest competitor. Each of these companies offers a full portfolio of residential door hardware products through multiple brands, including both mechanical and digital door hardware that spans a wide range of product features and price points. The remaining approximately 25% of residential door hardware sold in the United States is made by a large assortment of much smaller door hardware producers. Unlike the three dominant firms, each of these smaller producers usually sells residential door hardware under a single brand and specializes in one or two segments of residential door hardware.

29. Defendants' residential door hardware brands sold in the United States are as follows:

Product	ASSA ABLOY brand(s)	Spectrum brand(s)
Premium Mechanical Door Hardware	EMTEK Valli & Valli	Baldwin Estate Baldwin Reserve.
Smart Locks	Yale August	Kwikset.
Non-Connected Digital Door Locks	Yale	Kwikset.
Non-Premium Mechanical Door Hardware	Yale Sure-Loc	Baldwin Prestige Kwikset.

30. Residential door hardware producers, including Defendants, distribute their products to retailers directly or through wholesale distributors. Producers only rarely sell residential door hardware directly to end-customers.

31. Residential door hardware end-customers include homeowners, who may purchase a single lock set, and landlords, general contractors, and residential builders, who may purchase hundreds or thousands of different pieces of door hardware in a variety of styles and functions to outfit every type of door in a residential development.

Relevant Markets

A. Product Markets

32. Each of the products described below constitutes a line of commerce, as that term is used in Section 7 of the Clayton Act, and each of those is a relevant product market in which the potential competitive effects of this proposed transaction can be assessed

within the context of the broader marketplace for residential door hardware.

1. Premium Mechanical Door Hardware

33. Premium mechanical door hardware is residential door hardware made of high-quality, durable metals (primarily forged brass and cast bronze), and is highly customizable, design-driven, and constructed with superior craftsmanship. Such hardware is also offered in a wide variety of styles, designs, and finishes. These peculiar characteristics create a look and feel to the hardware that is distinct from other mechanical door hardware and connotes quality, style, and luxury. For example, Spectrum's Baldwin Reserve and Baldwin Estate brands position their door hardware as ''door couture,'' and ASSA ABLOY's EMTEK brand ''present[s] more like a fashion house than [a] hardware company.'' Accordingly, these distinguishing features also command distinct price points that are significantly higher than other types of mechanical door hardware—on average, premium mechanical door hardware is about twice as expensive as its non-premium analogues. More than $260 million of premium mechanical door hardware was sold in the United States in 2021.

34. Premium mechanical door hardware, unlike other mechanical door hardware, is sold primarily through specialized dealers, such as decorative hardware showrooms, door and window shops, and building-supply retailers known as ''lumberyards.'' Premium mechanical door hardware is not sold through mass-market retailers, such as ''big box'' home improvement stores. The specialized dealers that sell premium mechanical door hardware typically offer high levels of customer service, including in-store displays that exhibit the hardware's customizability and craftsmanship and sales personnel skilled in designing and ordering hardware to exacting standards. These dealers also cater to a distinct group of premium clientele—typically, discerning homeowners with significant disposable income—and do not offer or offer only a limited selection of non-premium mechanical door hardware. Intermediaries, such as interior designers, are sometimes also involved in selecting and ordering premium mechanical door hardware.

Example of EMTEK and Baldwin Reserve In-Store Displays

35. Brands of premium mechanical door hardware are recognized by customers and industry participants as ''premium'' or ''luxury'' producers. The largest and most well-known of these brands are owned by Defendants: EMTEK (ASSA ABLOY), Baldwin Reserve (Spectrum), and Baldwin Estate (Spectrum). These three brands collectively account for approximately two-thirds of the sales of premium mechanical door hardware in the United States. ASSA ABLOY also owns Valli & Valli, which is a smaller premium mechanical door hardware brand sold in the United States. Defendants use, among other things, high price points, premium product features, distribution through specialized retailers, and marketing to distinguish these brands from their other, non-premium mechanical door hardware brands, such as Kwikset, Yale, and Sure-Loc. There are premium mechanical door hardware brands not owned by Defendants, but none of them accounts for more than 6% of sales in the United States, and most of them account for 2% or less.

36. Producers of premium mechanical door hardware in the United States, including ASSA ABLOY and Spectrum HHI, offer a core lineup of product categories that correspond to the lineup of locks and lock sets needed to fully outfit a home. These core categories of premium mechanical door hardware include entrance lock sets (also called ''entry sets''), interior knob and lever lock sets (*i.e.,* passage, privacy, and dummy functions), and deadbolts. Other makers of premium mechanical door hardware, including ASSA ABLOY and Spectrum HHI, also sell one or more categories of premium mechanical

sliding door hardware (*e.g.,* pocket-door hardware).

37. Even when products are not necessarily substitutes for one another (*e.g.,* entry sets and passage sets), products sold under similar competitive conditions may be aggregated for analytical convenience. While not necessarily substitutes for one another, the various categories of premium mechanical door hardware (passage sets, privacy sets, dummy sets, entry sets, deadbolts, pocket door hardware, and barn door hardware) are sold under similar competitive conditions and thus may be grouped together for analytical purposes.

38. Premium mechanical door hardware constitutes a relevant product market. Premium mechanical door hardware satisfies the well-accepted ''hypothetical monopolist'' test set forth in the U.S. Department of Justice's and Federal Trade Commission's Horizontal Merger Guidelines (''Merger Guidelines''). A hypothetical monopolist of premium mechanical door hardware would find it profitable to impose a small but significant and non-transitory increase in price on such products because relatively few purchasers would substitute away to other types of door hardware in response to such a price increase. Because other types of door hardware (*e.g.,* commercial door hardware and non-premium mechanical door hardware) do not offer quality, aesthetics, or customization that is comparable to premium mechanical door hardware, customers desiring these product features have no reasonable substitutes for premium mechanical door hardware.

39. As alleged above, premium mechanical door hardware also exhibits virtually all of the ''practical indicia'' that courts use to identify relevant antitrust product markets: industry or public recognition, peculiar characteristics and uses, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.[1]

2. Smart Locks

40. Smart locks use wireless connections to allow the user to lock and unlock the door without using a key or physically operating the door hardware. That wireless connection also allows the user to operate and monitor the smart lock remotely and integrate the lock into a broader home security or ''smart home'' ecosystem, such as Amazon Alexa, Apple HomeKit, or Google Home. The physical range of remote operation varies by wireless protocol and degree of integration, but the physical range of shorter-range wireless protocols, such as Bluetooth, can also be extended through the use of a Wi-Fi hub, which most smart lock producers offer as part of a bundle with the smart lock or separately. The additional technology (hardware and software) incorporated into smart locks also corresponds to significantly higher price points than other kinds of digital door locks that lack this technology—on average, smart locks are about twice as expensive as non-connected locks. More than $420 million of smart locks were sold in the United States in 2021.

41. Industry participants and consumers recognize that smart locks are distinct from mechanical door hardware and non-connected digital door locks. Smart locks also offer technological functionality that mechanical door hardware cannot offer: the ability to lock and unlock a door without a physical key, the ability to monitor and operate a lock remotely, and the ability to integrate a lock into a smart home ecosystem or home security system. The latter two technological functions (remote operation/monitoring and integration) also distinguish smart locks from non-connected digital door locks and are sought by a distinct set of technologically savvy customers who value security, convenience, and connectivity. Accordingly, neither mechanical door hardware nor non-connected locks are reasonable substitutes for smart locks. Likewise, commercial door hardware is not a reasonable substitute for smart locks for the reasons alleged above. Additionally, smart locks are sold through a variety of channels, but, unlike other types of residential door hardware, smart locks are also sold through firms that specialize in consumer electronics and home security technology, including especially consumer electronics retailers, home security companies, and smart home companies.

42. Smart locks constitute a relevant product market. Smart locks satisfy the well-accepted hypothetical monopolist test set forth in the Merger Guidelines. A hypothetical monopolist of smart locks would find it profitable to impose a small but significant and non-transitory increase in price on such products because relatively few purchasers would substitute away to other types of door hardware in response to such a price increase. As alleged above, smart locks also exhibit virtually all of the ''practical indicia'' that courts use to identify relevant antitrust product markets: industry or public recognition, peculiar characteristics and uses, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.[2]

B. Geographic Market

43. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act for the product markets alleged herein. Defendants have agreed that the relevant geographic market is no broader than the United States. Moreover, prices for premium mechanical door hardware and smart locks are set in the United States, independent of pricing elsewhere, and residential door hardware sold outside the United States is often not compatible with doors used in the United States.

Anticompetitive Effects

44. The proposed transaction would eliminate competition between ASSA ABLOY and Spectrum HHI and significantly consolidate already concentrated markets. Freed from having to compete against its largest rival in the markets for premium mechanical door hardware and smart locks, ASSA ABLOY would acquire not only Spectrum HHI but also the opportunity to profit by, among other things, raising prices, reducing product quality, reducing investments in innovation, and reducing levels of service. The proposed transaction would also increase the likelihood of coordination.

A. The Proposed Transaction Is Presumptively Unlawful

45. The more that a proposed transaction would increase concentration in a market, the more likely it is that the proposed transaction may substantially lessen competition, as prohibited by the Clayton Act. Mergers that significantly increase concentration in already concentrated markets are presumptively anticompetitive and therefore presumptively unlawful. As the Supreme Court held, any transaction resulting in ''a firm controlling an undue percentage share of the relevant market,'' including a firm that would ''control[] at least 30%'' of the market, and ''a significant increase in the concentration of firms in that market is so inherently likely to lessen competition substantially that it must be enjoined.'' [3] For such transactions, including ASSA ABLOY's proposed acquisition of Spectrum HHI, their ''size makes them inherently suspect in light

[1] *See Brown Shoe Co.* v. *United States,* 370 U.S. 294, 325 (1962).

[2] *See id.*

[3] *United States* v. *Phila. Nat'l Bank,* 374 U.S. 321, 363 (1963).

of Congress' design in [Clayton Act Section 7] to prevent undue concentration.'' [4] Thus, such transactions are entitled to a presumption of illegality under Supreme Court precedent.

46. The Herfindahl-Hirschman Index (''HHI'') is a measure of market concentration widely accepted by economists and courts in evaluating the level of competitive vigor in a market and the likely competitive effects of an acquisition. HHI values (or ''points'') are calculated by summing the squares of the individual firms' market shares. Accordingly, HHI values range from 0 in markets with no concentration to 10,000 in markets where one firm has a 100% market share. As recognized in the Merger Guidelines, if the post-transaction HHI would be more than 2,500, and the transaction would increase the HHI by more than 200 points, then the transaction would result in a highly concentrated market, and the transaction is presumed likely to enhance market power and substantially lessen competition.

47. The proposed transaction is presumptively unlawful under the Merger Guidelines as well because it would significantly increase concentration in at least two markets that would be highly concentrated post-transaction:

Market	Post-merger HHI	HHI increase	Combined share (%)
Premium Mechanical Door Hardware	>4,000	>1,600	~65
Smart Locks	>3,000	>1,200	~50

48. So large and expansive are Defendants' businesses and so concentrated is the residential door hardware industry already, that the proposed transaction would also be presumptively unlawful under multiple alternative definitions of the relevant product market, including a product market as broad as all residential door hardware in the United States. In such a market, for example, the proposed transaction would increase the HHI by more than 500 points and would result in an HHI of more than 3,000.

B. The Proposed Transaction Would Eliminate Head-to-Head Competition Between ASSA ABLOY and Spectrum HHI

49. ASSA ABLOY and Spectrum HHI have competed vigorously for years to be leaders in the United States markets for premium mechanical door hardware and for smart locks. That competition has yielded tangible benefits for American consumers, primarily including lower prices, new and better products, and improved customer service. The proposed transaction would eliminate Defendants' important competition with each other, to the detriment of consumers.

1. Premium Mechanical Door Hardware

50. ASSA ABLOY and Spectrum HHI acknowledge internally that their EMTEK, Baldwin Reserve, and Baldwin Estate brands are each other's ''chief,'' ''main,'' ''primary,'' ''major,'' ''biggest,'' and ''closest'' competitor. EMTEK (ASSA ABLOY) is the ''market leader in premium residential door hardware,'' accounting for about 45% of all sales in the United States. Baldwin Reserve and Baldwin Estate (Spectrum) are collectively several times larger than their next largest competitor and account for about 20% of sales of premium mechanical door hardware in the United States.

51. Baldwin's importance as a competitor to EMTEK and the benefits that competition has for consumers also became apparent when Baldwin had some struggles. For example, in 2021, a Baldwin sales manager internally assessed that EMTEK had been able ''to almost recklessly take more price'' (*i.e.,* impose price increases) because Baldwin, EMTEK's ''biggest competitor,'' had ''fallen down,'' meaning it had fallen short as a competitor.

52. EMTEK displaced Baldwin as the premium market leader several years ago. But Spectrum HHI has made it a top ''strategic imperative[]'' to take steps to ''reaffirm Baldwin as the luxury door hardware leader.'' The thrust of Spectrum's Baldwin strategy is to invest [REDACTED] dollars over a multi-year period to improve, among other things, Baldwin's pricing, customer service, and products in order specifically to ''[r]ecapture the leadership position in luxury door hardware from chief competitor Emtek.''

53. The head-to-head rivalry between EMTEK and Baldwin to achieve ''leader'' status in the premium mechanical door hardware market has been a boon to American consumers in areas including better prices, service, and products.

a. Lower Prices

54. EMTEK, Baldwin Reserve, and Baldwin Estate regularly offer special discounts to their customers to win business from the other or to keep a customer from switching to the other.

55. For example, EMTEK regularly has provided additional discounts to win business away from Baldwin or prevent an EMTEK customer from switching to Baldwin. EMTEK offers additional discounts [REDACTED], and has instructed its salespeople that they [REDACTED].

56. Baldwin Reserve and Baldwin Estate also offer customers special discounts to compete against EMTEK. Between January 2017 and March 2022, more than [REDACTED] of Baldwin's requests for special discounts that mentioned a competitor referenced competition from EMTEK as the reason for Baldwin's price concession—far more than any other competitor. The narratives associated with these ''price change requests'' illuminate how aggressively Baldwin and EMTEK compete on the basis of price. To take one example, in 2021, Baldwin offered an unusually deep discount on ''high end custom[]'' door hardware from both the Baldwin Reserve and Baldwin Estate brands to a residential architecture firm that was building several single-family homes; Baldwin did so ''to keep Emtek OUT!'' and win [REDACTED] of dollars in new sales to the customer.

57. In addition to price-change-request discounts, Baldwin also offered targeted additional discounts on its Baldwin Reserve brand in 2021 as part of a broader effort to ''attack an Emtek stronghold'' with lumberyard and door and window shop customers, which resell premium mechanical door hardware to end-customers. The Baldwin Reserve brand had been ''launched to attack'' EMTEK's ''beachhead'' among these customers in 2011, but by 2021 it had not yet been able to make sufficient headway. Accordingly, Baldwin took several

[4] *Id.*

measures to ''get back on track'' with these customers, including offering ''more aggressive'' discounts to EMTEK customers in an effort to get them to switch to Baldwin.

58. Competition between Defendants' premium mechanical door hardware brands also constrains increases to list prices, which are published prices used as reference points for discounts. For example, in 2019, Spectrum HHI senior executives proposed raising the list prices of Baldwin Reserve and Baldwin Estate by [REDACTED], but acknowledged that they would first ''need to understand Emtek's recent price increase.'' Baldwin's director of sales responded that raising Baldwin prices by [REDACTED] would be ''insane'' because EMTEK had raised prices by only [REDACTED], making a [REDACTED] price increase ''the max'' Baldwin could pursue while ''still be[ing] competitive.''

b. Better Customer Service

59. Competition between EMTEK and Baldwin pushes the two to offer customers better levels of service, primarily in the form of faster order fulfillment (or ''lead times'') and provision of complimentary in-store displays.

60. Lead times are an important facet of competition in the premium mechanical door hardware market because customers value speedy order fulfillment. EMTEK, in particular, prides itself on having ''the shortest lead times in the industry,'' which it often credits for allowing it to win business away from competitors, including specifically from Baldwin. For example, an EMTEK sales director wrote in July 2020 that he ''believe[d] a large part of [EMTEK's] demand increase is as a result of our short lead times,'' noting specifically that those lead times empowered EMTEK to refuse discounts to customers that had no other option but EMTEK: ''We are being careful not to respond to last minute price discount requests for product that cannot be sourced from another supplier within an acceptable lead time.'' EMTEK similarly observed in September 2020 that one of its ''Top 3 Result Drivers'' was that its short lead times were ''allowing share grab'' because ''[c]ompetitors have long lead times.''

61. Baldwin has made investments to improve its lead times to compete better against EMTEK, which has benefited consumers. Most recently, as part of its broader strategic imperative, beginning in 2021, to ''recapture the leadership position'' from EMTEK, Baldwin invested heavily to shorten its lead times to match EMTEK's. It did so through its ''Quick Ship'' program, the crux of which is to shorten lead times by stocking more inventory, which in turn is intended to ''remove Emtek['s] lead time advantage'' and ''[r]ebuild showroom loyalty and brand preference.''

62. The use of complimentary in-store displays is another facet of competition between EMTEK and Baldwin because such displays are an important sales aid for showrooms and similar dealers. Because in-store displays help dealers sell door hardware and would otherwise be a substantial cost to the dealer (hundreds or thousands of dollars per display), giving away displays is a way for producers to curry favor with dealers. That favor can help to displace competitors by securing better real estate on the showroom floor and earning elevated status as a ''preferred'' or ''priority'' brand at the dealer.

63. Accordingly, to compete against each other, EMTEK and Baldwin give away showroom displays, which benefits consumers. EMTEK especially focuses on providing dealers with free in-store displays, which is one of its ''key strategies.'' Baldwin spends substantial sums each year providing free in-store displays in ''tiers'' based on the dealer's estimated annual sales volume. Baldwin also uses free displays to target EMTEK. In 2021, it made a concerted effort to provide free displays to lumberyard and door and window shop customers, and it reserved the largest and most expensive free displays for the dealers ''that have a large Emtek presence.''

d. New Products, Styles, and Finishes

64. Because aesthetics, customization, and expansive optionality are distinguishing features of premium mechanical door hardware, it is important for producers to continuously respond to design trends by offering new products, styles, and finishes. EMTEK has been known for years as a new product introduction ''machine,'' and Baldwin has likewise sought for years to increase the speed and quantity of its new product introductions to compete better against EMTEK. The resulting increase in product options has benefitted consumers.

65. If the proposed transaction were to proceed, the merged firm would likely reduce options available to consumers in the premium mechanical door hardware market, including potentially curtailing the introduction of new product lines or even eliminating entire brands or product lines. Immediately after the proposed transaction was publicly announced, Spectrum HHI sales personnel internally anticipated that the merged firm would ''[p]ut a bullet in [Baldwin] Reserve'' and ''fold Emtek on the high end,'' meaning eliminate more expensive EMTEK product lines, such as door hardware for mortise locks. That prediction contrasted sharply with Baldwin's pre-merger strategy to expand its product offerings in order to compete better against EMTEK.

2. Smart Locks

66. ASSA ABLOY's August and Yale brands and Spectrum HHI's Kwikset brand are ''top competitors'' of one another in the market for smart locks in the United States, in which ASSA ABLOY and Spectrum HHI are two of three dominant incumbents. Head-to-head competition between these brands has resulted in lower prices and new and innovative smart lock products, which have benefited consumers.

a. Lower Prices

67. Competition between Defendants' smart lock brands constrains price increases. For example, in December 2019, the head of ASSA ABLOY's Global Smart Residential group explained to ASSA ABLOY's CEO that the company was unable to raise prices on ASSA ABLOY's smart locks because of ''strong competition'' from its two largest rivals, including Spectrum HHI's Kwikset. And ASSA ABLOY's CEO was told that any evidence of Spectrum HHI ''raising prices on Kwikset smart locks'' would be an ''opportunity to take price,'' *i.e.,* increase prices. In fact, one source of additional revenue that ASSA ABLOY expects to realize from acquiring Spectrum HHI is to ''increase [the] price of Yale products'' by leveraging Spectrum HHI's ''scale and pricing power,'' especially in big box (also known as ''Do It Yourself'' or ''DIY'') home improvement stores. ASSA ABLOY anticipates that, ''[w]ith scale from [Spectrum HHI], Yale will be in a better pricing negotiation position and can expect to increase prices.''

68. Competition between Defendants' smart lock brands has also often resulted in Defendants lowering their prices to win business from the other or to prevent a customer from switching to the other. One example was a request for proposals in 2020 to supply a home security company with smart locks, in which Spectrum HHI's Kwikset was ''going against Yale predominantly.'' ASSA ABLOY's Yale had made a ''very competitive . . . offer,'' and, in response, Kwikset decided to make a ''margin challenged'' bid because, in the assessment of Spectrum HHI's chief marketing officer, the home security company is ''one of few, bigger swing

players in this type of market to make a bet on and I don't want Yale to get it.'' In another example, in 2021, Yale was ''trying to undercut [Kwikset's] pricing again'' for a smart home company, and in response, Kwikset lowered its pricing ''to keep Yale out of there.''

69. ASSA ABLOY has more recently taken ''an aggressive approach'' on pricing to take smart lock market share from Spectrum HHI's Kwikset in DIY home improvement stores. Starting in 2021, ASSA ABLOY implemented a strategy to organically grow its smart lock business in the United States, primarily by growing in the DIY sales channel, in which it has historically been under-exposed, and where Kwikset benefits from an incumbent position. ASSA ABLOY sought to do so by introducing ''new entry-to-mid'' price point smart locks under the Yale brand to compete with its two largest rivals, including Kwikset, and ''take [a half] bay [*i.e.,* shelf space] in entry-to-mid from'' one or both of them, thereby significantly increasing its share of sales in the DIY channel. Before the new smart locks could be rolled out in the third quarter of 2022, ASSA ABLOY sought to use an ''aggressive'' price reduction on its existing smart lock products to ''get a foothold into Home Depot'' and greatly expand the number of Home Depot locations that carry Yale or August smart locks.

70. The centerpiece of ASSA ABLOY's ''focused retail strategy'' is the introduction of a new version of its Yale Assure smart lock, also called the 400 Series, which will offer price points 15–25% lower than Yale's existing smart locks for equivalent functionality, putting Yale's smart locks on par with the pricing of Spectrum's Kwikset's smart locks.

b. New and Innovative Smart Locks

71. Competition between ASSA ABLOY and Spectrum HHI has also spurred innovation and the introduction of new smart locks, which has benefited consumers. For example, as alleged in paragraphs 69–70, ASSA ABLOY developed a new line of smart locks—the Yale 400 Series—to compete against Kwikset. The 400 Series locks will not only be sold at lower prices than Yale's existing smart locks, but they will also be 30% smaller, giving them a sleeker, more compact appearance. The 400 Series will also offer new features, including a [REDACTED]. Beyond the 400 Series, ASSA ABLOY is also developing other, lower-priced smart locks in response to ''low cost lock leaders'' including Kwikset.

72. Kwikset has likewise innovated new smart locks in response to ASSA ABLOY. For example, it is developing a smart lock to compete against the pricing and features of Yale's existing Assure smart lock, including to ''match the flexibility offered by Yale.'' Kwikset also developed a new Z-Wave smart lock in 2021 with features that were ''absolutely necessary to catch up to where Yale has been for many years.''

C. The Proposed Transaction Would Make Anticompetitive Coordination More Likely

73. In the premium mechanical door hardware market, the proposed transaction would eliminate important competition among major rivals and create an even more dominant firm within a highly concentrated market. As a result, there is an increased risk that harm from tacit or other forms of coordination would become more likely due to the proposed transaction.

74. In the smart lock market, the proposed transaction would make coordination more likely by creating a duopoly consisting of the merged firm and its largest competitor, collectively accounting for more than 70% of sales in the market. In that market structure, the two dominant firms would have an increased ability to analyze and plan for one another's conduct. By increasing the likelihood of interdependent behavior among competitors in the smart lock market, the proposed transaction may substantially lessen competition and keep prices high in that market.

Absence of Countervailing Factors

75. New entry or expansion by existing competitors in response to an exercise of market power by the post-transaction firm would not be likely, timely, or sufficient in its magnitude, scope, or character to deter or fully offset the proposed transaction's likely anticompetitive effects.

76. Barriers to merger-induced entry and expansion are high in the market for premium mechanical door hardware. First, significant financial investment and time are needed to earn and maintain market recognition as a ''premium'' or ''luxury'' brand. Second, premium brands require an exceptionally broad product offering to be competitive, which is expensive and time consuming to design and manufacture at scale. Third, the customer base of specialized dealers is highly fragmented and costly to serve, requiring large upfront investments in a widespread and knowledgeable sales force and costly marketing collateral (*e.g.,* in-store displays). Fourth, ASSA ABLOY'S EMTEK and Spectrum's Baldwin have developed an entrenched and dominant physical and reputational presence in showrooms and other dealers, which would be very difficult to displace. As Baldwin's sales director observed after the proposed transaction was announced, the combination of EMTEK and Baldwin ''should be able to dominate every showroom in the country.''

77. Barriers to entry and expansion are also high in the smart locks market. First, it is costly to develop competitive smart lock products, both initially and over time, because doing so requires sophisticated software and hardware engineering capabilities. Second, it takes time and money to break through as a brand that is known and trusted by consumers. Large incumbents like ASSA ABLOY and Spectrum HHI have a structural advantage in branding because they have been able to build up strong brand recognition over time, which has created a virtuous cycle in which brand recognition spurs increased sales, which further grows the incumbents' market presence, which in turn spurs further increased sales, and so on. It would be difficult for a new entrant or a smaller existing competitor to disrupt that structural advantage. Third, significant operational scale is needed to serve many of the most important groups of smart lock customers, especially big-box home improvement stores, consumer electronics stores, home builders, and home security companies.

78. Neither the premium mechanical door hardware market nor the smart lock market has any unique structural barriers to collusion. Any barriers to collusion in these markets are no greater than in other industries and therefore would not overcome the normal presumption that the increased concentration resulting from the proposed transaction would increase the likelihood of interdependent behavior among competitors, such as tacit collusion.

79. The proposed transaction is also unlikely to generate verifiable, merger-specific efficiencies sufficient to prevent or outweigh the anticompetitive effects that the proposed transaction is likely to cause in the relevant markets.

Defendants' Proposed Divestitures Are Insufficient To Remedy the Proposed Transaction's Anticompetitive Effects

80. ASSA ABLOY and Spectrum have known all along that their proposed transaction presented significant antitrust concerns. The obvious antitrust problems triggered much hand-wringing and negotiation at the highest levels of both companies about how to handle the ''anti-trust situation'' the transaction would create. In July 2021, during due

diligence for the proposed transaction, ASSA ABLOY executives were ''having daily calls on antitrust'' and acknowledged early on that the overlap between EMTEK and Baldwin would be ''the biggest focus'' for competition enforcers. Spectrum wanted assurance that ASSA ABLOY would do whatever it would take to appease antitrust enforcers' objections, but ASSA ABLOY jealously guarded the collection of assets it had acquired, particularly the assets that make up its ''Yale Global business,'' and it was reluctant to commit to divest them.

81. Ultimately, Defendants' discussions about how to navigate inevitable antitrust objections became so contentious that the transaction's anticompetitive nature nearly sank the proposed deal before it could be signed. On the afternoon of September 7, 2021, hours before the proposed transaction was announced, ASSA ABLOY's CEO wrote to Spectrum's CEO that, based on unresolved disagreements about how to handle the antitrust risks of the proposed transaction, ASSA ABLOY had ''come to the conclusion to withdraw from the process and proceed with other opportunities.''

82. Although Defendants were apparently able to resolve their disagreements at the eleventh hour, the proposed transaction's antitrust problems remained. Accordingly, in the summer of 2022, ASSA ABLOY and Spectrum effectively conceded that their proposed transaction would harm competition by proposing a ''remedy'' to antitrust enforcers that would involve ASSA ABLOY selling off parts of its business units that that sell residential door hardware in the United States. Selling that incomplete package of assets would not replicate the intensity of competition that exists today.

83. The touchstone of any appropriate antitrust remedy is the immediate, durable, and complete preservation of competition. Merely transplanting assets from one firm to another is not an effective antitrust remedy because it creates unacceptable risks of diluting the intensity of competition—the risk of creating a firm with less incentive, ability, or resources than the original owner to use the divested assets in service of competition, the risk of entanglement or conflict between the buyer and seller of the divested assets, and the risk of the buyer liquidating or redeploying the divested assets. Defendants bear the heavy burden of establishing that any remedy they propose meets these exacting standards, especially given the substantial competitive problems their proposed deal presents, and they cannot meet that burden here.

84. Defendants have not disclosed all of the details of their proposed ''remedy'' and have not identified any potential buyer for divested assets, but they have disclosed some information about the assets they propose to divest to try to ''fix'' their flawed transaction. In particular, the parties offered to divest portions of ASSA ABLOY's Mechanical Residential business unit relating only to the EMTEK brand and portions of ASSA ABLOY's Global Smart Residential business unit relating only to Yale and August smart locks sold in the United States and Canada. These partial divestitures would be insufficient to preserve the intensity of existing competition. They would split up existing business units, cutting off the divested assets from the organization, resources, and efficiencies that have allowed ASSA ABLOY to be a leading competitor in the United States premium mechanical door hardware and smart lock markets.

85. The parties' proposed divestitures would be insufficient even if a transfer of assets were executed flawlessly, but the complex carving out (and in some cases splitting) of manufacturing capacity, warehouses, personnel, intellectual property, supply chain relationships, and other resources is virtually guaranteed to be anything but flawless. American consumers should not be forced to underwrite this risky experiment in corporate reorganization. The only way to ensure that does not happen is to block Defendants' proposed transaction.

Jurisdiction and Venue

86. The United States brings this action, and this Court has subject-matter jurisdiction over this action, under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

87. Defendants are engaged in, and their activities substantially affect, interstate commerce. ASSA ABLOY and Spectrum sell products to numerous customers located throughout the United States.

88. This Court has personal jurisdiction over each Defendant under Section 12 of the Clayton Act, 15 U.S.C. 22. ASSA ABLOY and Spectrum both transact business in this District. ASSA ABLOY and Spectrum have also both consented to personal jurisdiction in this District.

89. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b) and (c). ASSA ABLOY and Spectrum both reside in this District.

Violation Alleged

90. The United States hereby incorporates the allegations of paragraphs 1 through 89 above as if set forth fully herein.

91. Unless enjoined, ASSA ABLOY's proposed acquisition of Spectrum HHI may lessen competition substantially and tend to create a monopoly in premium mechanical door hardware and smart locks in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

92. Among other things, the proposed acquisition would:

a. eliminate significant present and future head-to-head competition between ASSA ABLOY and Spectrum HHI;

b. reduce competition generally in the relevant markets;

c. reduce competition to innovate in the relevant markets;

d. cause prices to rise for customers in the relevant markets;

e. cause a reduction in product quality in the relevant markets; and

f. cause a reduction in customer service in the relevant markets.

Relief Requested

93. Plaintiff requests that the Court:

a. adjudge and decree that ASSA ABLOY's proposed acquisition of Spectrum HHI is unlawful and violates Section 7 of the Clayton Act, 15 U.S.C. 18;

b. permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed transaction or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine ASSA ABLOY and Spectrum HHI;

c. award the United States the costs of this action; and

d. award the United States such other relief that the Court deems just and proper.

Dated this 15th day of September, 2022.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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In the United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. *ASSA ABLOY AB, et al.,* Defendants.

Civil No. 1:22–cv–02791–ACR

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on September 15, 2022;

And whereas, the United States and Defendants, ASSA ABLOY AB (''ASSA ABLOY'') and Spectrum Brands Holdings, Inc. (''Spectrum'') have consented to entry of this Final Judgment without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Defendants agree to make certain divestitures;

And whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now Therefore, it is *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''ASSA ABLOY'' means Defendant ASSA ABLOY AB, a publicly traded Swedish stock company headquartered in Stockholm, Sweden, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Spectrum'' means Defendant Spectrum Brands Holdings, Inc., a Delaware corporation with its headquarters in Middleton, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Fortune'' means Fortune Brands Innovations, Inc., a Delaware corporation with its headquarters in Deerfield, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Acquirer'' or ''Acquirers'' means Fortune or another entity, approved by the United States in its sole discretion, to which ASSA ABLOY divests the Divestiture Assets.

E. ''Divestiture Assets'' means (1) the Premium Mechanical Divestiture Assets; and (2) the Smart Lock Divestiture Assets.

F. ''Divestiture Date'' means the date on which the closing of the transaction between ASSA ABLOY and Acquirer occurs.

G. ''Door'' means a swinging door or pocket door used for ingress to a room, closet, dwelling, or passageway, but does not include cabinet doors, rolling doors, garage doors, and, except to the extent located at Residences, delivery locker doors.

H. ''Including'' means including, but not limited to.

I. ''Multifamily'' means, with respect to any buildings containing more than one Residence, whether or not such buildings have mixed uses, Residences in such buildings, along with common areas associated with Residences in such buildings, including entrances and exits (but not educational, medical, retail, commercial, industrial, or professional areas not associated with Residences).

J. ''Premium Mechanical Divestiture Business'' means ASSA ABLOY's (1) Emtek branded business, and (2) Schaub branded business.

K. ''Premium Mechanical Divestiture Assets'' means, at the option of Acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Premium Mechanical Divestiture Business, including:

1. the Emtek brand name and the Schaub brand name, including the right to the exclusive and unlimited worldwide use of the Emtek brand name and the Schaub brand name in all sales channels, as well as all registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications, relating to the Emtek and Schaub trademarks;

2. leasehold interest to the real property and facilities located at 600 Baldwin Park Boulevard, City of Industry, California;

3. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

4. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory, materials, office equipment and furniture, computer hardware, and supplies;

5. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

6. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

7. all records and data, including (i) customer lists, accounts, sales, and credits records, (ii) production, repair, maintenance, and performance records, (iii) manuals and technical information ASSA ABLOY provides to its own employees, customers, suppliers, agents, or licensees, (iv) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (v) drawings, blueprints, and designs;

8. in addition to the intellectual property assets listed in Paragraph II.K.1., all other intellectual property

owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications; and

9. all other intangible property, including (i) commercial names and d/b/a names, (ii) technical information, (iii) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.,* for the handling of materials and substances), quality assurance and control procedures, (iv) design tools and simulation capabilities, and (v) rights in internet websites and internet domain names.

L. ''Premium Mechanical Divestiture Relevant Personnel'' means, at the option of Acquirer, all full-time, part-time, or contract employees of ASSA ABLOY, wherever located, whose job responsibilities relate in any way to the Premium Mechanical Divestiture Business, at any time between September 8, 2021, and the Divestiture Date. Subject to Acquirer's election, the United States, in its sole discretion, will resolve any disagreement relating to which employees are Premium Mechanical Divestiture Relevant Personnel.

M. ''Regulatory Approvals'' means (1) any approvals or clearances pursuant to filings under antitrust or competition laws that are required for the Transaction to proceed; and (2) any approvals or clearances pursuant to filings under antitrust, competition, or other U.S. or international laws that are required for Acquirer's acquisition of the Divestiture Assets to proceed.

N. ''Residences'' means single family homes and residential units within Multifamily dwellings, whether owned or whether leased or offered for long-term or short-term use by a unit or home owner directly or through a third party, including apartments, co-ops, and condominiums, and properties provided by AirBnB, VRBO and similar businesses, but not including hotel rooms, rooms in medical and long-term care facilities, dormitory rooms, and prison cells.

O. ''Smart Lock'' means a wireless connected digital lock affixed to a Door, but does not include any of the product categories listed in Appendix A.

P. ''Smart Lock Divestiture Business'' means: (1) the August branded business, and (2) the Yale branded Multifamily and residential Smart Lock businesses in the U.S. and Canada (including Yale Real Living), but does not include (i) the Yale branded commercial business anywhere in the world, and (ii) all other Yale branded businesses anywhere in the world.

Q. ''Smart Lock Divestiture Assets'' means the (1) Yale Brand and Trademarks; and (2) at the option of Acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the Smart Lock Divestiture Business, including:

i. The Premises Sublease Agreement, by and between VINA—CPK COMPANY LIMITED and ASSA ABLOY Smart Product Vietnam Co., Ltd., dated July 23, 2019;

ii. all other real property, including fee simple interests, real property leasehold interests and renewal rights thereto, improvements to real property, and options to purchase any adjoining or other property, together with all buildings, facilities, and other structures;

iii. all tangible personal property, including fixed assets, machinery and manufacturing equipment, tools, vehicles, inventory (including Yale branded residential mechanical inventory), materials, office equipment and furniture, computer hardware, and supplies;

iv. all contracts, contractual rights, and customer relationships, and all other agreements, commitments, and understandings, including supply agreements, teaming agreements, and leases, and all outstanding offers or solicitations to enter into a similar arrangement;

v. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations, including those issued or granted by any governmental organization, and all pending applications or renewals;

vi. all records and data, including (i) customer lists, accounts, sales, and credits records, (ii) production, repair, maintenance, and performance records, (iii) manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, (iv) records and research data concerning historic and current research and development activities, including designs of experiments and the results of successful and unsuccessful designs and experiments, and (v) drawings, blueprints, and designs;

vii. all intellectual property owned, licensed, or sublicensed, either as licensor or licensee, including (i) patents, patent applications, and inventions and discoveries that may be patentable, (ii) registered and unregistered copyrights and copyright applications, and (iii) registered and unregistered trademarks, trade dress, service marks, trade names, and trademark applications;

viii. all other intangible property, including (i) commercial names and d/b/a names, (ii) technical information, (iii) computer software and related documentation, know-how, trade secrets, design protocols, specifications for materials, specifications for parts, specifications for devices, safety procedures (*e.g.,* for the handling of materials and substances), quality assurance and control procedures, (iv) design tools and simulation capabilities, (v) rights in internet websites and internet domain names;

ix. an exclusive, perpetual, irrevocable, royalty-free, and sublicensable license to install, copy, modify, create derivative works of, and use solely in the United States and Canada, any access control systems designed for Residences including mobile applications and backend ecosystems, including the Yale Access software platform, *provided, however,* that nothing in this paragraph prohibits ASSA ABLOY from retaining, for use outside the United States and Canada, an independent instance of any internally developed access control system designed for Residences; and

R. ''Smart Lock Divestiture Relevant Personnel'' means, at the option of Acquirer, all full-time, part-time, or contract employees of ASSA ABLOY, wherever located, whose job responsibilities relate in any way to the Smart Lock Divestiture Business, at any time between September 8, 2021 and the Divestiture Date. The United States, in its sole discretion, will resolve any disagreement relating to which employees are Smart Lock Divestiture Relevant Personnel.

S. ''Transfer of Smart Lock Foreign Divestiture Assets'' means transfer of the Smart Lock Divestiture Assets located at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc Vietnam.

T. ''Transaction'' means the proposed acquisition of Spectrum's Hardware and Home Improvement Division by ASSA ABLOY, pursuant to a purchase agreement dated September 8, 2021, as amended.

U. ''Yale Brand and Trademarks'' means the ownership and exclusive and unrestricted use of the Yale brand name and the business goodwill associated therewith in the U.S. and Canada for all current and future residential uses and all current and future Multifamily Smart

Lock uses (including all interconnect-style Smart Locks for Multifamily uses and nexTouch Smart Locks for Multifamily uses and any future products with similar functionality and applications as interconnect and nexTouch Smart Locks in Residential and Multifamily uses).

III. Applicability

A. This Final Judgment applies to ASSA ABLOY and Spectrum, as defined above, and all other persons in active concert or participation with any Defendant who receive actual notice of this Final Judgment.

B. If, prior to complying with Section V and Section VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of business units that include the Divestiture Assets, Defendants must require any purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirer.

IV. Additional Relief

If, after three years following the Divestiture Date and until the date that is five years from entry of this Final Judgment, the monitoring trustee determines, after investigation and consultation with the United States, ASSA ABLOY and Acquirer, that:

a. Acquirer's competitive intensity in the residential Smart Locks business has diminished relative to ASSA ABLOY's competitive intensity in that business as of the Divestiture Date; and

b. Such diminishment in competitive intensity is in material part due to limitations on Acquirer's right to use the rights held by ASSA ABLOY to the Yale brand name or trademarks in the U.S. and Canada as of the Divestiture Date, then

the monitoring trustee may, after consultation with the United States, provide a written report of the monitoring trustee's conclusions to the United States. Upon receiving such report, the United States, in its sole discretion, will have the ability to seek leave of the Court to re-open this proceeding specifically to seek only the grant of additional Yale brand name or trademark rights (including the ability to use those rights to compete for any category or customer segment) in the U.S. and Canada to Acquirer.

V. Divestiture of the Premium Mechanical Divestiture Assets

A. ASSA ABLOY is ordered and directed, within 3 calendar days after the closing of the Transaction, to divest the Premium Mechanical Divestiture Assets in a manner consistent with this Final Judgment to Acquirer, except that, for individual assets subject to Regulatory Approvals, ASSA ABLOY is ordered and directed to divest such assets by the later of 3 calendar days after the closing of the Transaction or 15 days after the relevant Regulatory Approvals have been received. The United States, in its sole discretion, may agree to one or more extensions of these time periods not to exceed 30 calendar days in total for each time period, and ASSA ABLOY must notify the Court of any extensions agreed to by the United States.

B. At the option of the Acquirer, for all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Premium Mechanical Divestiture Assets, ASSA ABLOY must, assign or otherwise transfer all contracts, agreements, and customer relationships, to the Acquirer within the deadlines set forth in Paragraph V.A. ASSA ABLOY must not interfere with any negotiations between Acquirer and a contracting party.

C. Subject to Paragraph V.A, ASSA ABLOY must use best efforts to divest the Premium Mechanical Divestiture Assets as expeditiously as possible. ASSA ABLOY must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Premium Mechanical Divestiture Assets.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include the entire Premium Mechanical Divestiture Assets.

E. In the event ASSA ABLOY is attempting to divest the Divestiture Assets to an Acquirer other than Fortune, ASSA ABLOY promptly must make known, by usual and customary means, the availability of the Divestiture Assets. ASSA ABLOY must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. ASSA ABLOY must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that ASSA ABLOY need not provide information or documents subject to the attorney-client privilege or work-product doctrine. ASSA ABLOY must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

F. At the option of the Acquirer, ASSA ABLOY must provide prospective Acquirers with (1) access to make inspections of the Premium Mechanical Divestiture Assets; (2) access to all material environmental, zoning, and other permitting documents and information relating to the Premium Mechanical Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Premium Mechanical Divestiture Assets, in each case, that would customarily be provided as part of a due diligence process. ASSA ABLOY also must disclose all material encumbrances on any part of the Premium Mechanical Divestiture Assets, including on intangible property.

G. At the option of the Acquirer, ASSA ABLOY must cooperate with and assist Acquirer in identifying and hiring all Premium Mechanical Divestiture Relevant Personnel, including:

1. Within 10 business days following the receipt of a request by Acquirer, ASSA ABLOY must identify all Premium Mechanical Divestiture Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Premium Mechanical Divestiture Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, ASSA ABLOY must provide to Acquirer and the United States additional information relating to Premium Mechanical Divestiture Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. ASSA ABLOY must also provide Acquirer and the United States information relating to current and accrued compensation and benefits of Premium Mechanical Divestiture Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, any current target or guaranteed bonuses, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Premium Mechanical Divestiture Relevant Personnel. If ASSA ABLOY is barred by any applicable law from providing any of this information, ASSA ABLOY must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation to

Acquirer and the United States of ASSA ABLOY's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, ASSA ABLOY must promptly make Premium Mechanical Divestiture Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. ASSA ABLOY must not interfere with any effort by Acquirer to employ any Premium Mechanical Divestiture Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Premium Mechanical Divestiture Relevant Personnel unless (i) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to September 8, 2021, or (ii) the offer is approved by the United States in its sole discretion. ASSA ABLOY's obligations under this Paragraph V.G.4. will expire 180 calendar days after the Divestiture Date.

5. For Premium Mechanical Divestiture Relevant Personnel who elect employment with Acquirer within 180 calendar days of the Divestiture Date, ASSA ABLOY must waive all non-compete and non-disclosure agreements; vest and pay to the Premium Mechanical Divestiture Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vest any unvested pension and other equity rights; and provide all other benefits that those Premium Mechanical Divestiture Relevant Personnel otherwise would have been provided had the Premium Mechanical Divestiture Relevant Personnel continued employment with ASSA ABLOY, including any retention bonuses or payments. ASSA ABLOY may maintain reasonable restrictions on disclosure by Premium Mechanical Divestiture Relevant Personnel of ASSA ABLOY's proprietary non-public information that is unrelated to the Premium Mechanical Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 180 calendar days from the Divestiture Date, ASSA ABLOY may not solicit to rehire any Premium Mechanical Divestiture Relevant Personnel who were hired by Acquirer within 90 calendar days of the Divestiture Date unless (a) an individual is terminated or laid off by Acquirer or (b) Acquirer agrees in writing that ASSA ABLOY may solicit to rehire that individual. Nothing in this Paragraph V.G.6. prohibits ASSA ABLOY from advertising employment openings using general solicitations or advertisements and rehiring Premium Mechanical Divestiture Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

H. At the option of the Acquirer, ASSA ABLOY must warrant to Acquirer that (1) the Premium Mechanical Divestiture Assets will be operational in all material respects and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Premium Mechanical Divestiture Assets; and (3) ASSA ABLOY has disclosed all material encumbrances on any part of the Premium Mechanical Divestiture Assets, including on intangible property. Following the sale of the Premium Mechanical Divestiture Assets, ASSA ABLOY must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Premium Mechanical Divestiture Assets.

I. At the option of the Acquirer, ASSA ABLOY must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Premium Mechanical Divestiture Business. Until Acquirer obtains the necessary licenses, registrations, and permits, ASSA ABLOY must provide Acquirer with the benefit of ASSA ABLOY's licenses, registrations, and permits to the full extent permissible by law.

J. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a supply contract or contracts for all products necessary to operate the Premium Mechanical Divestiture Business for a period of up to 12 months, on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer.

K. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve up to two extensions of any supply contract for a period of 12 months each. Any supply contract extension will be on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any supply contract, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty, other than payment of any amounts due thereunder, upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with servicing any supply contracts must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a contract to provide transition services to cover all services necessary to operate the Premium Mechanical Divestiture Business, including services for back office, human resources, accounting, employee health and safety, and information technology services and support for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services, as agreed to by Acquirer.

M. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to an additional 12 months. Any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such services, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any contract for transition services, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

N. If any term of an agreement between ASSA ABLOY and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment including as

implemented by the Asset Preservation and Stipulation and Order entered contemporaneously herewith, to the extent that ASSA ABLOY cannot fully comply with both, this Final Judgment as so implemented determines ASSA ABLOY's obligations.

VI. Divestiture of Smart Lock Divestiture Assets

A. ASSA ABLOY is ordered and directed, within 3 calendar days after the closing of the Transaction, to divest the Smart Lock Divestiture Assets in a manner consistent with this Final Judgment to Acquirer, except that, for individual assets subject to Regulatory Approvals, ASSA ABLOY is ordered and directed to divest such assets by the later of 3 calendar days after the closing of the Transaction or 15 days after the relevant Regulatory Approvals have been received. The United States, in its sole discretion, may agree to one or more extensions of these time periods not to exceed 30 calendar days in total for each time period, and ASSA ABLOY must notify the Court of any extensions agreed to by the United States.

B. At the option of Acquirer, for all contracts, agreements, and customer relationships (or portions of such contracts, agreements, and customer relationships) included in the Smart Lock Divestiture Assets, ASSA ABLOY must assign or otherwise transfer all contracts, agreements, and customer relationships, to the Acquirer within the deadlines set forth in Paragraph VI.A. ASSA ABLOY must not interfere with any negotiations between Acquirer and a contracting party.

C. Subject to Paragraph VI.A, ASSA ABLOY must use best efforts to divest the Smart Lock Divestiture Assets as expeditiously as possible. ASSA ABLOY must take no action that would jeopardize the completion of the divestiture ordered by the Court, including any action to impede the permitting, operation, or divestiture of the Smart Lock Divestiture Assets. To incentivize ASSA ABLOY to achieve Transfer of Smart Lock Foreign Divestiture Assets as expeditiously as possible, after December 31, 2023, ASSA ABLOY is ordered to pay to the United States $50,120 per day until ASSA ABLOY achieves Transfer of Smart Lock Foreign Divestiture Assets, *provided, however,* that such payments will not be due if ASSA ABLOY can demonstrate to the United States, after consultation with the monitoring trustee, that (1) Transfer of Smart Lock Foreign Divestiture Assets was delayed due to a force majeure event, or (2) operational control has otherwise been given to the Acquirer such that the purposes of the divestiture have been carried out. If ASSA ABLOY relies on point (2) of this provision, it shall confer with the United States in an effort to reach agreement on whether the steps taken carry out the purposes of the divestiture, and if the parties are unable to reach agreement, ASSA ABLOY may ask the Court to resolve this issue. The United States' agreement to an extension pursuant to Paragraph VI.A. will not relieve ASSA ABLOY of the requirement to make these payments. If ASSA ABLOY demonstrates to the United States that unanticipated material difficulties not due to the actions or inaction of ASSA ABLOY have resulted in unavoidable delays to achieve Transfer of Smart Lock Foreign Divestiture Assets, the United States may, in its sole discretion, agree to forgo some or all of the payments.

D. Unless the United States otherwise consents in writing, divestiture pursuant to this Final Judgment must include all Smart Lock Divestiture Assets.

E. In the event ASSA ABLOY is attempting to divest the Divestiture Assets to an Acquirer other than Fortune, ASSA ABLOY promptly must make known, by usual and customary means, the availability of the Divestiture Assets. ASSA ABLOY must inform any person making an inquiry relating to a possible purchase of the Divestiture Assets that the Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. ASSA ABLOY must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that are customarily provided in a due diligence process; *provided, however,* that ASSA ABLOY need not provide information or documents subject to the attorney-client privilege or work-product doctrine. ASSA ABLOY must make all information and documents available to the United States at the same time that the information and documents are made available to any other person.

F. At the option of Acquirer, ASSA ABLOY must provide prospective Acquirers with (1) access to make inspections of the Smart Lock Divestiture Assets; (2) access to all material environmental, zoning, and other permitting documents and information relating to the Smart Lock Divestiture Assets; and (3) access to all financial, operational, or other documents and information relating to the Smart Lock Divestiture Assets, in each case, that would customarily be provided as part of a due diligence process. ASSA ABLOY also must disclose all material encumbrances on any part of the Smart Lock Divestiture Assets, including on intangible property.

G. At the option of Acquirer, ASSA ABLOY must cooperate with and assist Acquirer in identifying and, hiring all Smart Lock Divestiture Relevant Personnel, including:

1. Within 10 business days following the receipt of a request by Acquirer, ASSA ABLOY must identify all Smart Lock Divestiture Relevant Personnel to Acquirer and the United States, including by providing organization charts covering all Smart Lock Divestiture Relevant Personnel.

2. Within 10 business days following receipt of a request by Acquirer or the United States, ASSA ABLOY must provide to Acquirer and the United States additional information relating to Smart Lock Divestiture Relevant Personnel, including name, job title, reporting relationships, past experience, responsibilities, training and educational histories, relevant certifications, and job performance evaluations. ASSA ABLOY must also provide Acquirer and the United States information relating to current and accrued compensation and benefits of Smart Lock Divestiture Relevant Personnel, including most recent bonuses paid, aggregate annual compensation, any current target or guaranteed bonuses, if any, any retention agreement or incentives, and any other payments due, compensation or benefits accrued, or promises made to the Smart Lock Divestiture Relevant Personnel. If ASSA ABLOY is barred by any applicable law from providing any of this information, ASSA ABLOY must provide, within 10 business days following receipt of the request, the requested information to the full extent permitted by law and also must provide a written explanation to Acquirer and the United States of ASSA ABLOY's inability to provide the remaining information, including specifically identifying the provisions of the applicable laws.

3. At the request of Acquirer, ASSA ABLOY must promptly make Smart Lock Divestiture Relevant Personnel available for private interviews with Acquirer during normal business hours at a mutually agreeable location.

4. ASSA ABLOY must not interfere with any effort by Acquirer to employ any Smart Lock Divestiture Relevant Personnel. Interference includes offering to increase the compensation or improve the benefits of Smart Lock Divestiture Relevant Personnel unless

(a) the offer is part of a company-wide increase in compensation or improvement in benefits that was announced prior to September 8, 2021, or (b) the offer is approved by the United States in its sole discretion. ASSA ABLOY's obligations under this Paragraph VI.G.4. will expire 180 calendar days after the Divestiture Date.

5. For Smart Lock Divestiture Relevant Personnel who elect employment with Acquirer within 180 calendar days of the Divestiture Date, ASSA ABLOY must waive all non-compete and non-disclosure agreements; vest and pay to the Smart Lock Divestiture Relevant Personnel (or to Acquirer for payment to the employee) on a prorated basis any bonuses, incentives, other salary, benefits or other compensation fully or partially accrued at the time of the transfer of the employee to Acquirer; vested any unvested pension and other equity rights; and provide all other benefits that those Smart Lock Divestiture Relevant Personnel otherwise would have been provided had the Smart Lock Divestiture Relevant Personnel continued employment with ASSA ABLOY, including any retention bonuses or payments. ASSA ABLOY may maintain reasonable restrictions on disclosure by Smart Lock Divestiture Relevant Personnel of ASSA ABLOY's proprietary non-public information that is unrelated to the Smart Lock Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of 180 calendar days from the Divestiture Date, ASSA ABLOY may not solicit to rehire any Smart Lock Divestiture Relevant Personnel who were hired by Acquirer within 90 calendar days of the Divestiture Date unless (i) an individual is terminated or laid off by Acquirer or (ii) Acquirer agrees in writing that ASSA ABLOY may solicit to rehire that individual. Nothing in this Paragraph VI.G.6. prohibits ASSA ABLOY from advertising employment openings using general solicitations or advertisements and rehiring any Smart Lock Divestiture Relevant Personnel who apply for an employment opening through a general solicitation or advertisement.

H. At the option of the Acquirer, ASSA ABLOY must warrant to Acquirer that (1) the Smart Lock Divestiture Assets will be operational in all material respects and without material defect on the date of their transfer to Acquirer; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Smart Lock Divestiture Assets; and (3) ASSA ABLOY has disclosed all material encumbrances on any part of the Smart Lock Divestiture Assets, including on intangible property. Following the sale of the Smart Lock Divestiture Assets, ASSA ABLOY must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Smart Lock Divestiture Assets.

I. At the option of the Acquirer, ASSA ABLOY must use best efforts to assist Acquirer to obtain all necessary licenses, registrations, and permits to operate the Smart Lock Divestiture Business. Until Acquirer obtains the necessary licenses, registrations, and permits, ASSA ABLOY must provide Acquirer with the benefit of ASSA ABLOY's licenses, registrations, and permits to the full extent permissible by law.

J. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a supply contract or contracts for all products necessary to operate the Smart Lock Divestiture Business, including nexTouch and Interconnect branded products produced by ASSA ABLOY prior to the Divestiture Date, for a period of up to 12 months, on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer.

K. Any amendment to or modification of any provision of any such supply contract is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve up to two extensions of any supply contract of 12 months each. Any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such products, as agreed to by Acquirer. If Acquirer seeks an extension of the term of any supply contract, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the supply contract expires. Acquirer may terminate a supply contract, or any portion of a supply contract, without cost or penalty, other than payment of any amounts due thereunder, upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with servicing any supply contracts must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

L. At the option of Acquirer, and subject to approval by the United States in its sole discretion, on or before the Divestiture Date, ASSA ABLOY must enter into a contract to provide transition services to cover (1) all services necessary to operate the Smart Lock Divestiture Business, including services for back office, human resources, accounting, employee health and safety, and information technology services and support, and (2) all services necessary to operate the manufacturing facility at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc, Vietnam, for a period of up to 12 months on terms and conditions reasonably related to market conditions for the provision of the transition services.

M. Any amendment to or modification of any provision of a contract to provide transition services is subject to approval by the United States, in its sole discretion. The United States, in its sole discretion, may approve one or more extensions of any contract for transition services, for a total of up to 12 additional months, *provided, however,* that any contract extension will be on terms and conditions reasonably related to market conditions for the provision of such services. If Acquirer seeks an extension of the term of any contract for transition services, ASSA ABLOY must notify the United States in writing at least 30 calendar days prior to the date the contract expires. Acquirer may terminate a contract for transition services, or any portion of a contract for transition services, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The employees of ASSA ABLOY tasked with providing transition services must not share any competitively sensitive information of Acquirer with any other employee of ASSA ABLOY.

N. ASSA ABLOY will have the right to use the Yale brand name in the U.S. and Canada solely for commercial products not sold for Residences for a transitional, wind-down period of up to twelve (12) months following the Divestiture Date. (For these purposes only, Residences does not include commercial products sold in order to fulfill orders in connection with the Yale Accentra platform for up to six months following the Divestiture Date and Acquirer may elect, with consent of the United States, to extend this term for an additional six months.) ASSA ABLOY must within 30 days following the Divestiture Date commence a brand transition for its Yale branded commercial products in the U.S. and Canada, which shall be completed no later than twelve (12) months after commencement, in connection with the wind-down described above in this Paragraph. In addition, ASSA ABLOY will have the right to use the Yale brand name in the U.S. and Canada solely for commercial products for a transitional,

wind-down for a period of up to two (2) years following the Divestiture Date with respect to sales of commercial products in connection with honoring any specification or quote, in each case issued prior to the Divestiture Date.

For the avoidance of doubt, nothing in this proposed Final Judgment limits or prohibits Acquirer's use of any non-Yale brand for any purpose.

O. If any term of an agreement between ASSA ABLOY and Acquirer, including an agreement to effectuate the divestiture required by this Final Judgment, varies from a term of this Final Judgment including as implemented by the Asset Preservation and Stipulation and Order entered contemporaneously herewith, to the extent that ASSA ABLOY cannot fully comply with both, this Final Judgment as so implemented determines ASSA ABLOY's obligations.

P. At the option of Acquirer, if at any time after the Divestiture Date, Acquirer notifies ASSA ABLOY in writing of any patents that (1) are owned by ASSA ABLOY as of the Divestiture Date; (2) are not licensed or otherwise transferred to Acquirer under Paragraphs II.Q.2.vii; and (3) were contemplated by ASSA ABLOY to be used in the Smart Lock Divestiture Business prior to the Divestiture Date as set forth in the Product Development Roadmap attached to the Stock Purchase Agreement, such patents will automatically be deemed licensed to Acquirer under Paragraph II.Q.2.vii.

Q. At the option of Acquirer, for a period of five years following the Divestiture Date, Acquirer will have the right to request and receive a code base assessment of the Yale Access control system once per year to inventory the proprietary libraries comprising the Yale Access control system and confirm whether any of the baseline libraries are included within ASSA ABLOY's U.S. or Canadian products.

R. At the option of Acquirer, Acquirer may purchase all of ASSA ABLOY's inventory as of the Divestiture Date that is branded Yale in the residential mechanical space, subject to the terms and conditions of the supply agreement in Paragraph VI.J, but without restriction on how or where it is sold to residential or, solely with respect to such inventory, Multifamily customers.

VII. Financing

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets.

VIII. Asset Preservation

Defendants must take all steps necessary to comply with their respective obligations under the Asset Preservation Stipulation and Order entered by the Court.

IX. Affidavits

A. Within 20 calendar days of the entry of the Asset Preservation Stipulation and Order in this matter, and every 30 calendar days thereafter until the divestitures required by this Final Judgment have been completed, ASSA ABLOY must deliver to the United States and the monitoring trustee, if one has been appointed, an affidavit, signed by each the Chief Financial Officer and General Counsel of its Americas division, describing in reasonable detail the fact and manner of ASSA ABLOY's compliance with this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

B. Each affidavit required by Paragraph IX.A. must include: (1) a description of the efforts ASSA ABLOY has taken to complete the sale of any of the Divestiture Assets and to provide required information to Acquirer; and (2) a description of any limitations placed by ASSA ABLOY on information provided to Acquirer. Objection by the United States to information provided by ASSA ABLOY to Acquirer must be made within 14 calendar days of receipt of the affidavit, except that the United States may object at any time if the information set forth in the affidavit is not true or complete.

C. ASSA ABLOY must keep all records of any efforts made to divest the Divestiture Assets until one year after the Divestiture Date.

D. Within 20 calendar days of entry of the Asset Preservation Stipulation and Order in this matter, ASSA ABLOY must deliver to the United States an affidavit, signed by the Chief Financial Officer and General Counsel of its America's division, that describes in reasonable detail all actions that ASSA ABLOY has taken and all steps that ASSA ABLOY has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The United States, in its sole discretion, may approve different signatories for the affidavits.

E. If ASSA ABLOY makes any changes to actions and steps described in affidavits provided pursuant to Paragraph IX.D., ASSA ABLOY must, within 15 calendar days after any change is implemented, deliver to the United States an affidavit describing those changes.

F. ASSA ABLOY must keep all records of any efforts made to comply with Section VIII until one year after the Divestiture Date.

X. Appointment of Monitoring Trustee

A. Upon application of the United States, which Defendants may not oppose, the Court will appoint a monitoring trustee selected by the United States, after consultation with Defendants, and approved by the Court.

B. The monitoring trustee will have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by the Court and will have other powers as the Court deems appropriate. The monitoring trustee will have no responsibility or obligation for operation of the Divestiture Assets.

C. Defendants may not object to actions taken by the monitoring trustee in fulfillment of the monitoring trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the monitoring trustee. Objections by Defendants must be conveyed in writing to the United States and the monitoring trustee within 10 calendar days of the monitoring trustee's action that gives rise to Defendants' objection.

D. The monitoring trustee will serve at the cost and expense of ASSA ABLOY pursuant to a written agreement, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion.

E. The monitoring trustee may hire, at the cost and expense of ASSA ABLOY, any agents and consultants, including investment bankers, attorneys, and accountants, that are reasonably necessary in the monitoring trustee's judgment to assist with the monitoring trustee's duties. These agents or consultants will be solely accountable to the monitoring trustee and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion.

F. The compensation of the monitoring trustee and agents or consultants retained by the monitoring trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the monitoring trustee and ASSA ABLOY are unable to reach agreement on the monitoring trustee's compensation or other terms and conditions of engagement within 14 calendar days of the appointment of the monitoring trustee, the United States, in its sole discretion, may take appropriate action, including by making a recommendation to the Court. Within

three business days of hiring any agents or consultants, the monitoring trustee must provide written notice of the hiring and the rate of compensation to Defendants and the United States.

G. The monitoring trustee must account for all costs and expenses incurred.

H. ASSA ABLOY and Acquirer must use best efforts to assist the monitoring trustee to monitor Defendants' compliance with their obligations under this Final Judgment and the Asset Preservation Stipulation and Order. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, ASSA ABLOY and Acquirer must provide the monitoring trustee and agents or consultants retained by the monitoring trustee with full and complete access to all personnel, books, records, and facilities of the Divestiture Assets. ASSA ABLOY and Acquirer may not take any action to interfere with or to impede accomplishment of the monitoring trustee's responsibilities.

I. The monitoring trustee must investigate and report on ASSA ABLOY's compliance with this Final Judgment, the Asset Preservation Stipulation and Order, and any inter-party agreements between Acquirer and ASSA ABLOY relating to the divestiture, including by investigating and reporting pursuant to Section IV of this Final Judgment and regarding compliance with the terms of this Final Judgment. During any period while any transition services or supply agreements entered into pursuant to Sections V and VI of this Final Judgment are in effect, or any period while a proceeding may be reopened by the United States pursuant to Section IV of this Final Judgment, the monitoring trustee must provide periodic reports to the United States setting forth Defendants' efforts to comply with their obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The United States, in its sole discretion, will set the frequency of the monitoring trustee's reports.

J. The monitoring trustee will serve until the later of (1) the expiration of the terms of all transition services agreements or supply agreements entered pursuant to Sections V and VI of this Final Judgment or (2) the conclusion of any proceeding reopened by the United States pursuant to Section IV of this Final Judgment, or, if no such proceeding is reopened prior to the date that is five (5) years from entry of this Final Judgment, five (5) years from entry of this Final Judgment; unless the United States, in its sole discretion, determines a different period is appropriate.

K. If the United States determines that the monitoring trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute.

XI. Dispute Resolution

A. ASSA ABLOY and Acquirer will each have the right to initiate an expedited dispute resolution process in the event of a dispute over the extent of either party's rights under this Final Judgment, including whether an application is Multifamily, commercial, or residential and whether the intellectual property rights set forth in Paragraph II.Q.2.vii have been transferred. In any such dispute over whether an application is Multifamily, commercial or residential, ASSA ABLOY will bear the burden of proof and all ambiguities in the agreement with respect to whether an application is Multifamily, commercial or residential will be construed against it; the losing party will pay all expenses. With respect to a dispute under any supply agreement pursuant to Paragraphs V.J, V.K, VI.J, or VI.K of this Final Judgment and until the expiration of the Final Judgment, ASSA ABLOY and Acquirer will each have the right to initiate a one-day binding arbitration to be held within 15 days of notice by either party.

B. This Section XI will not be interpreted to limit or impact the monitoring trustee's responsibilities under Section X.

XII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or of related orders such as the Asset Preservation Stipulation and Order or of determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendants, Defendants must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

XIII. No Reacquisition

ASSA ABLOY may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment without prior authorization of the United States.

XIV. Public Disclosure

A. No information or documents obtained pursuant to any provision of this Final Judgment may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, for the purpose of evaluating the proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

B. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

C. If at the time that Defendants furnish information or documents to the United States pursuant to any provision of this Final Judgment, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and

Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XV. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section XVI.

XVII. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire 10 years from the date of its entry, except that after five years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and continuation of this Final Judgment is no longer necessary or in the public interest.

XVIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

_____

United States District Judge

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Plaintiff, v. *ASSA ABLOY AB, et al.,* Defendants.

Civil No. 1:22–cv–02791–ACR

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment filed in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 8, 2021, Defendants ASSA ABLOY AB (''ASSA ABLOY'') and Spectrum Brands Holding, Inc. (''Spectrum'') signed an asset and stock purchase agreement under which ASSA ABLOY would acquire Spectrum's Hardware and Home Improvement division for approximately $4.3 billion. The United States filed a civil antitrust Complaint on September 15, 2022, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition may be to substantially lessen competition for the premium mechanical door hardware and smart locks markets in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

The parties vigorously litigated this case for more than seven months and, with the assistance of a mediator, have now reached a proposed settlement. The United States files this Competitive Impact Statement simultaneously with a proposed Final Judgment and an Asset Preservation Stipulation and Order (''Stipulation and Order'').

Under the proposed Final Judgment, which is explained more fully below, ASSA ABLOY is required to make certain divestitures to Fortune Brands Innovations, Inc. (''Fortune'') or to another entity approved by the United States in its sole discretion. The proposed Final Judgment provides for financial penalties if ASSA ABLOY does not complete the divestiture of assets located outside the United States within a specified period of time. It also provides for appointment of a monitoring trustee to monitor Defendants' compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any inter-party agreements between ASSA ABLOY and the acquirer that relate to the divestiture. The monitoring trustee will also monitor the acquirer's success in competing in the market for residential smart locks with the assets divested.

Under the terms of the Stipulation and Order, ASSA ABLOY must take certain steps to operate, preserve, and maintain the full economic viability, marketability, and competitiveness of the divested assets until the divestitures ordered in the proposed Final Judgment are complete. The Stipulation and Order requires Defendants to abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the

proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Complete descriptions of the Defendants and their proposed acquisition are found in the Complaint, filed September 15, 2022. (Dkt. No. 1). ASSA ABLOY is a globally integrated conglomerate that manufactures and sells a wide array of access solutions products—including residential and commercial door hardware, doors, and electronic access systems. In the United States, ASSA ABLOY competes in the market for premium mechanical door hardware using the Emtek and Schaub brands and in the market for smart locks using the August and Yale brands. ASSA ABLOY had about $3.5 billion in sales in the United States in 2021.

Spectrum's Hardware and Home Improvement division is the largest residential door hardware producer in the United States. Notably, it competes using the widely known Kwikset brand as well as the Baldwin Estate, Baldwin Reserve, and Baldwin Prestige brands. It had about $1.4 billion in sales in the United States in 2021.

On September 8, 2021, ASSA ABLOY agreed to buy Spectrum's Hardware and Home Improvement division for approximately $4.3 billion.

B. The Competitive Effects of the Transaction

Complete descriptions of the potential effects on competition in the markets for both premium mechanical door hardware and for smart locks are found in the Complaint. (Dkt. No. 1). In the markets for smart locks and premium mechanical door hardware, ASSA ABLOY and Spectrum are close competitors and share enormous market shares that render the merger presumptively anticompetitive.

As alleged in the Complaint, the proposed transaction would have threatened competition in at least two separate antitrust markets in the United States: (1) premium mechanical door hardware and (2) smart locks, which are wirelessly connected digital door locks. In the premium mechanical door hardware market, the proposed transaction would be a merger to near-monopoly, where the merged firm would account for around 65% of sales, becoming more than ten times larger than its next-largest competitor. In the market for smart locks, the proposed transaction would cut off competition in a fast-growing door hardware segment, leaving the merged firm with more than a 50% share and only one remaining meaningful competitor—an effective duopoly. In both of these markets, the proposed transaction easily surpasses the thresholds that trigger a presumptive violation of the Clayton Act.

Historically, competition between Defendants to sell residential door hardware to showrooms, home improvement stores, builders, online retailers, home security companies, and other customers has generated lower prices, higher quality, exciting innovations, and superior customer service. The head-to-head competition between the Defendants is significant. They regularly reduce price to win business from each other and respond to each other's competitive initiatives with innovation and better offerings. For example, one of Spectrum's top ''strategic imperatives'' in 2021 was to invest heavily in better service and pricing for its premium mechanical door hardware brands (Baldwin Estate and Baldwin Reserve) in order to recapture market share from its ''chief competitor,'' ASSA ABLOY's Emtek brand. Similarly, ASSA ABLOY has recently invested in a new lineup of smart locks designed to ''take [a half] bay'' (*i.e.,* take shelf space) from Spectrum's Kwikset brand and its other large competitor in major home improvement stores. The proposed transaction would eliminate those benefits altogether.

III. Alternatives to the Proposed Final Judgment and Summary of Settlement Rationale

As an alternative to the proposed Final Judgment, the United States considered either (1) proceeding to verdict and continuing to request the Court to enter a permanent injunction blocking the proposed merger between ASSA ABLOY and Spectrum or (2) accepting earlier divestitures that Defendants proposed.

The United States identified several concerns with the divestiture proposals. The divestiture agreement restricted the rights of Fortune to use the Yale brand name to sell products outside of residential smart locks, including important products in the multifamily segment. This would have limited Fortune's incentive to invest in the Yale brand and curtailed its ability to use that brand to compete for customers who sought Yale locks that could be used in all aspects of residential and multifamily buildings. The supply agreement between ASSA ABLOY and Fortune lacked specific enforcement terms and risked Fortune's ability to supply an important customer base. While the Emtek and Schaub assets ASSA ABLOY proposed to divest represented mostly a separate, ongoing business unit, the disparity between the potential competitive significance of those assets and the Yale branded residential smart lock assets would have increased incentives for tacit coordination between the post-merger ASSA ABLOY and Fortune. Finally, the divestiture, as initially proposed, included a lengthy period of transition and entanglement in which ASSA ABLOY and Fortune would have shared—for an indefinite period—an important smart locks manufacturing facility in Vietnam.

Under the guidance of a mediator, a settlement was reached, ultimately culminating in the proposed Final Judgment described below.

This proposed Final Judgment provides greater relief than earlier offers by the Defendants. In particular, the proposed Final Judgment:

- Expands the scope of the Yale-related intellectual property to be divested to Fortune or an alternative acquirer. This includes the unrestricted right to use the Yale brand in the United States and Canada for any smart locks used in single- and multi-family residences, the right to use the Yale brand for mechanical residential products, as well as an irrevocable license to the Yale Access software platform for associated end uses in the United States and Canada. It also includes rights to the Interconnect and nexTouch brands, which are important to the multifamily segment. These provisions will improve Fortune's or an alternative acquirer's incentives to invest in the divested brands and preserves the acquirer's ability to use those brands to compete against ASSA ABLOY in the future, including in ways and with products not contemplated today.
- Mandates a shortened transition period for entanglements between ASSA ABLOY and the acquirer and subjects ASSA ABLOY to significant daily penalties if it fails to transfer certain smart lock assets located in Vietnam by December 31, 2023.
- Appoints a monitoring trustee to (1) ensure ASSA ABLOY's compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any inter-party agreements between ASSA ABLOY and the acquirer relating to the divestiture and (2) determine, for a period of up to five years after the entry of the Final Judgment, whether

Fortune or an alternative acquirer has replicated the competitive intensity in the residential smart locks business that was lost as a result of ASSA ABLOY's acquisition of Spectrum's Hardware and Home Improvement division and, if not, whether the diminishment in competitive intensity is in material part due to limitations on the acquirer's right to use the Yale brand name or trademarks in the United States and Canada.

• If the monitoring trustee makes such a determination, the monitoring trustee may, after consultation with the United States, provide a written report of that determination to the United States, after which the United States may seek leave of the Court to reopen this proceeding and seek divestiture of additional brand or trademark rights.

The United States does not contend that the relief obtained by the proposed Final Judgment will fully eliminate the risks to competition alleged in the Complaint. The United States respectfully submits that only a complete injunction preventing the original proposed merger would have eliminated those risks. Alternatively, complete divestitures of all relevant standalone business units necessary to fully compete may have diminished those risks significantly. Based on the totality of circumstances and risks associated with this litigation, however, the United States has agreed to the proposed Final Judgment, which includes additional provisions and protections to address some of the concerns identified above. The United States believes the Court will conclude the proposed Final Judgment is in the public interest under the Tunney Act.

IV. Explanation of the Proposed Final Judgment

The proposed Final Judgment includes the following terms:

A. Divested Assets

The proposed Final Judgment requires ASSA ABLOY to divest to Fortune, or to another acquirer approved by the United States in its sole discretion, what the proposed Final Judgment defines as the ''Premium Mechanical Divestiture Assets,'' which include, at the option of the acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the ''Premium Mechanical Divestiture Business,'' which consists of ASSA ABLOY's Emtek and Schaub branded businesses. For example, as further detailed in the proposed Final Judgment, the Premium Mechanical Divestiture Assets include a facility in California, as well as machinery, equipment, contracts, licenses, permits, and intellectual property. This intellectual property includes the right to exclusive and unlimited worldwide use, in all sales channels, of the Emtek brand names and trademarks and Schaub brand name and trademarks. Pursuant to Paragraph V.D of the proposed Final Judgment, unless the United States otherwise consents in writing, the divestiture must include the entire Premium Mechanical Divestiture Assets.

The proposed Final Judgment also requires ASSA ABLOY to divest to Fortune, or to another acquirer approved by the United States in its sole discretion, the ''Smart Lock Divestiture Assets,'' which includes, at the option of the acquirer, all of ASSA ABLOY's rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, relating to or used in connection with the ''Smart Lock Divestiture Business.'' As defined in the proposed Final Judgment, the Smart Lock Divestiture Business consists of (1) the August branded business and (2) the Yale branded multifamily and residential smart lock businesses in the United States and Canada (including Yale Real Living), but does not include (i) the Yale branded commercial business anywhere in the world or (ii) all other Yale branded businesses anywhere in the world. As further detailed in the proposed Final Judgment, the Smart Lock Divestiture Assets include machinery, equipment, contracts, licenses, permits, and intellectual property. This intellectual property includes the right to the Yale brand name and trademarks for uses in the United States and Canada, as well as a license to the Yale Access software platform for use in the United States in Canada. The Smart Lock Divestiture Assets also include a facility in Vietnam. Pursuant to Paragraph VI.D of the proposed Final Judgment, unless the United States consents in writing, the divestiture must include all Smart Lock Divestiture Assets.

Paragraph VI.P of the proposed Final Judgment further provides that, if at any time after the divestiture of the Smart Lock Divestiture assets, the acquirer notifies ASSA ABLOY in writing of any patents that (1) are owned by ASSA ABLOY as of the divestiture date, (2) are not licensed or otherwise transferred to the acquirer pursuant to the proposed Final Judgment, and (3) were contemplated by ASSA ABLOY to be used in the Smart Lock Divestiture Business prior to the divestiture date, as set forth in the Product Development Roadmap attached to the Stock Purchase Agreement, then those patents will automatically be deemed as licensed to the acquirer under the terms of the proposed Final Judgment.

Paragraph VI.Q of the proposed Final Judgment provides that, for five years after the divestiture of the Smart Lock Divestiture Assets, the acquirer has the right to annually request and receive a code base assessment of the Yale Access control system to inventory the proprietary libraries comprising the Yale Access control system and confirm whether any of the baseline libraries are included within ASSA ABLOY's United States or Canadian products.

Paragraph VI.R of the proposed Final Judgment provides the acquirer the option to purchase all of ASSA ABLOY's Yale branded inventory, as of the divestiture date, relating to the residential mechanical space. This purchase is subject to the terms of any supply agreement(s) entered into pursuant to the proposed Final Judgment, but does not restrict the acquirer on where or how it sells such inventory to residential or multifamily customers.

Paragraph VI.N of the proposed Final Judgment provides ASSA ABLOY the right to use the Yale brand name in the United States and Canada. It provides for a twelve-month wind-down period during which ASSA ABLOY can continue to use the Yale brand name for commercial products, including in some limited circumstances associated with the Yale Accentra platform and sold to multifamily residences. In addition, ASSA ABLOY is permitted to continue to use the Yale brand name for commercial products to fulfill specifications or quotes issued prior to the divestiture.

B. Relevant Personnel

The proposed Final Judgment contains provisions intended to facilitate the acquirer's efforts to hire certain employees. Specifically, Paragraphs V.G and VI.G of the proposed Final Judgment require ASSA ABLOY, at the option of the acquirer, to provide the acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews. It also provides that ASSA ABLOY must not interfere with any negotiations by the acquirer to hire these employees. In addition, for employees who elect employment with the acquirer, ASSA ABLOY must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, provide any pay pro rata, provide all compensation and

benefits that those employees have fully or partially accrued, and provide all other benefits that the employees would generally be provided had those employees continued employment with ASSA ABLOY, including but not limited to any retention bonuses or payments.

C. Transitional Services Agreement

The proposed Final Judgment requires ASSA ABLOY to provide transition services to maintain the viability and competitiveness of the Premium Mechanical Divestiture Business and the Smart Lock Divestiture Business in the period following the divestitures. Specifically, Paragraphs V.L and VI.L of the proposed Final Judgment require ASSA ABLOY, at the acquirer's option, to enter into transition services agreements for all services necessary to operate the Premium Mechanical Divestiture Business and Smart Lock Divestiture Business—*e.g.,* back office, human resources, accounting, employee health and safety, and information technology services and support—for a period of up to 12 months. Paragraph VI.L of the proposed Final Judgment also requires that the applicable transition services agreement cover all services necessary to operate the manufacturing facility located at Lot A10, Ba Thien II IP, Thien Ke, Binh Xuyen, Vinh Phuc, Vietnam for a period of up to 12 months. The acquirer may terminate the transition services agreements, or any portion of them, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The United States, in its sole discretion, may approve one or more extensions of any transition services agreement for a total of up to an additional 12 months and any amendments to or modifications of any provisions of a transition services agreement are subject to approval by the United States, in its sole discretion. Employees of ASSA ABLOY tasked with supporting these transition services agreements must not share any of Fortune's or another acquirer's competitively sensitive information with any other employee of ASSA ABLOY.

D. Supply Agreements

Paragraphs V.J and VI.J of the proposed Final Judgment require ASSA ABLOY, at the acquirer's option, to enter into a supply contract or contracts for all products necessary to operate the Premium Mechanical Divestiture Business and the Smart Lock Divestiture Business, including nexTouch and Interconnect branded products produced by ASSA ABLOY prior to the divestiture date, for a period of up to twelve months. The acquirer may terminate a supply contract, or any portion of it, without cost or penalty, other than payment of any amounts due thereunder, at any time upon 15 calendar days' written notice. The United States, in its sole discretion, may approve up to two extensions of any supply contract for a period of 12 months each, and any amendments to or modifications of any provisions of a supply contract are subject to approval by the United States, in its sole discretion. This will help to ensure that Fortune will not face disruption to its supply during an important transitional period. Employees of ASSA ABLOY tasked with supporting these supply contracts must not share any of Fortune's or another acquirer's competitively sensitive information with any other employee of ASSA ABLOY.

E. Monitoring Trustee

The proposed Final Judgment provides for the appointment of a monitoring trustee to examine Defendants' compliance with the terms of the proposed Final Judgment, the Stipulation and Order, and any agreements between ASSA ABLOY and the acquirer relating to the divestiture. The monitoring trustee will also monitor Fortune's competitive intensity in the residential smart locks market relative to ASSA ABLOY's pre-divestiture competitive intensity and, for a period of up to five years after entry of the Final Judgment, may report to the United States if that competitive intensity has diminished in material part due to limitations on the acquirer's right to use the Yale brand name or trademarks in the United States and Canada. Upon receipt of such a report, the United States, in its sole discretion, will have the ability to seek leave of the Court to reopen this proceeding to seek additional relief.

The monitoring trustee will not have any responsibility or obligation for the operation of the Premium Mechanical Divestiture Assets or Smart Lock Divesture Assets. The monitoring trustee will serve at Defendants' expense, on such terms and conditions as the United States approves, in its sole discretion, and Defendants must assist the monitoring trustee in fulfilling his or her obligations. The monitoring trustee will provide periodic reports to the United States and will serve until the later of (1) the expiration of all transition services agreements or supply agreements entered pursuant to the proposed Final Judgment or (2) conclusion of any reopening of this proceeding by the United States, as provided for by the proposed Final Judgment, or if no such proceeding is reopened within five years of the entry of the Final Judgment, five years from the entry of the Final Judgment. The United States, in its sole discretion, may determine a different period of time is appropriate for the monitor's term.

F. Penalty for Noncompliance

The proposed Final Judgment requires that ASSA ABLOY use best efforts to complete the divestiture of Smart Lock Divestiture Assets as quickly as possible, including the transfer of overseas assets in Vietnam, to the acquirer. To incentivize ASSA ABLOY to effectuate this transfer as expeditiously as possible, after December 31, 2023, the proposed Final Judgment requires ASSA ABLOY to pay to the United States $50,120 per day until the overseas assets have been transferred. Such payments will not be due, however, if ASSA ABLOY can demonstrate to the United States, after consultation with the monitoring trustee, that (1) the transfer was delayed due to a force majeure event or (2) operational control of the overseas assets has otherwise been given to the acquirer. In the event ASSA ABLOY relies on such operational control provision, ASSA ABLOY shall confer with the United States to reach agreement on this, and if the parties are unable to reach an agreement, ASSA ABLOY may ask the Court to resolve this issue.

G. Dispute Resolution

Paragraph XI.A of the proposed Final Judgment provides that ASSA ABLOY and the acquirer will each have the right to initiate an expedited dispute resolution process in the event of a dispute over the extent of either party's rights under the proposed Final Judgment. This provision does not apply to disputes between ASSA ABLOY and the United States.

H. Other Provisions

Paragraphs V.E. and VI.E of the proposed Final Judgment outline procedures to follow if ASSA ABLOY attempts to divest the Premium Mechanical Divestiture Assets or the Smart Lock Divestiture Assets to an acquirer other than Fortune, including what information should be made available to prospective acquirers. ASSA ABLOY is required to inform any such prospective acquirers that the assets are being divested in accordance with the proposed Final Judgment, and

to provide to any prospective acquirer a copy of the proposed Final Judgment.

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment as effective as possible. Paragraph XVI.A provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense that the Final Judgment addresses.

Pursuant to Paragraph XVI.B of the proposed Final Judgment, Defendants agree that they will abide by the proposed Final Judgment and that they may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail.

Paragraph XVI.C of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that a Defendant has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XVI.C of the proposed Final Judgment provides that, in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, the Defendant must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph XVI.D of the proposed Final Judgment states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVII of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and continuation of the Final Judgment is no longer necessary or in the public interest.

V. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

VI. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 8300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or ''consent decrees,'' in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the

defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should also bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Microsoft,* 56 F.3d at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' (internal citations omitted)); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

In formulating the proposed Final Judgment, the United States considered documents relating to ASSA ABLOY's proposed divestiture to Fortune Brands. Because these documents were determinative in formulating the proposed Final Judgment, copies are attached to the Stipulation and Order to comply with 15 U.S.C. 16(b).

Dated: May 5, 2023

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

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BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0074]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Explosives Responsible Person Questionnaire

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until July 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Shawn Stevens, Explosives Industry Liaison, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400.

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 Bureau of Justice Statistics, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The regulations at 27 CFR 555.57 require that all persons holding ATF explosives licenses or permits as of May 23, 2003, must report descriptive information on their responsible persons and possessors of explosives to ATF. Subsequent changes to their list of persons must also be reported. The information collection (IC) OMB 1140–0074 (Explosives Responsible Person Questionnaire—ATF Form 5400.13A/5400.16) is being revised to add a new form (Part B) to the existing requirement. The information collected on this new form will be replacing the Responsible Persons List, which was previously included on (IC) OMB 1140–0070 (Application for Explosives License or Permit—ATF Form 5400.13/5400.16). The new (Part B) will be used to gather information for each Explosives Responsible Person. Additionally, this collection includes a decrease in both, the total number of respondents by 38,125 and the total burden hours by 40 minutes since the last renewal in 2022.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Explosives Responsible Person Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 5400.13A/5400.16. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector—businesses or other for-profit institutions, individuals or households. Obligation to respond is mandatory per 27 CFR 555.57.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 11,875 respondents will respond to this collection once annually, and it will take each respondent approximately 20 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3,958 hours which is equal to 11,875 (total respondents) * 1 (# of response per respondent) * .33333 (20 minutes).

7. *An estimate of the total cost burden associated with the collection:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
ATF Form 5400.13A/5400.16	11,875	1	11,875	20	3,958
Unduplicated Totals	11,875		11,875		3,958

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 9, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10236 Filed 5–12–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0017]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for the Tribal Sexual Assault Services Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, 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.

DATES: Comments are encouraged and will be accepted for 60 days until July 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

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 Bureau of Justice Statistics, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Authorized by 34 U.S.C. 12291(b)(11), the primary purpose of the OVW Technical Assistance Program is to provide direct assistance to grantees and their subgrantees to enhance the success of local projects they are implementing with VAWA grant funds. In addition, OVW is focused on building the capacity of criminal justice and victim services organizations to respond effectively to sexual assault, domestic violence, dating violence, and stalking and to foster partnerships between organizations that have not traditionally worked together to address violence against women, such as faith- and community-based organizations.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for the Tribal Sexual Assault Services Program.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Semi-Annual Progress Report for the Tribal Sexual Assault Services Program (1122–0017).

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, local and tribal governments. Obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents, frequency and the amount of time estimated for an average respondent to respond:* An estimated 100 respondents will respond to this collection twice a year. The time per response is 1 hour.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden is 200 hours.

7. *An estimate of the total annual cost burden associated with the collection:* The annual cost burden associated with this collection is $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Semi-Annual Progress Report for the Tribal Sexual Assault Serv. Program	100	2	200	1	200
Unduplicated Totals	100		200		200

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 8, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10238 Filed 5–12–23; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0072]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Explosives Employee Possessor Questionnaire—ATF Form 5400.28

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until July 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Shawn Stevens, Explosives Industry Liaison, Federal Explosives Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Shawn.Stevens@atf.gov,* or by telephone at 304–616–4400.

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 Bureau of Justice Statistics, 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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Persons employed in the explosives business or operations who are required to ship, transport, receive, or possess explosive materials, will complete the Explosives Employee Possessor Questionnaire—ATF Form 5400.28. The form will be submitted to ATF, to determine whether the person who provided the information, is qualified to be an employee possessor in an explosives business. Additionally, the adjustments associated with this collection includes an increase in both, the number of respondents by 72,125 and total burden hours by 24,374 since the last renewal in 2021.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Explosives Employee Possessor Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF F 5400.28. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector—business or other for-profit institutions. The obligation to respond is mandatory per 27 CFR 555.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 83,125 respondents will use the form once annually, and it will take each respondent 20 minutes to complete their response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 27,708 hours, which is equal to 83,125 (total respondents) * 1 (# of response per respondent) * .33333 (20 minutes).

7. *An estimate of the total cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
ATF Form 5400.28	83,125	1	83,125	20	27,708
Unduplicated Totals	83,125		83,125		27,708

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 9, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10237 Filed 5–12–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for the Tribal Sexual Assault Services Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office on Violence Against Women, 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.

DATES: Comments are encouraged and will be accepted for 60 days until July 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

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 Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Authorized by 34 U.S.C. 12511(e), Violence Against Women Act of 2005, Sexual Assault Services Program. The Sexual Assault Services Program (SASP), created by the Violence Against Women Act of 2005 (VAWA 2005), is the first federal funding stream solely dedicated to the provision of direct intervention and related assistance for victims of sexual assault. The SASP encompasses four different funding streams for States and Territories, Tribes, State Sexual Assault Coalitions, Tribal Coalitions, and culturally specific organizations. Overall, the purpose of SASP is to provide intervention, advocacy, accompaniment, support services, and related assistance for adult, youth, and child victims of sexual assault, family and household members of victims, and those collaterally affected by the sexual assault. The Tribal SASP supports efforts to help survivors heal from sexual assault trauma through direct intervention and related assistance from social service organizations such as rape crisis centers through 24-hour sexual assault hotlines, crisis intervention, and medical and criminal justice accompaniment. The Tribal SASP will support such services through the establishment, maintenance, and expansion of rape crisis centers and other programs and projects to assist those victimized by sexual assault.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Services Program (1122–0024).

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: State, Local and Tribal Governments. Obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 15 respondents will respond to this collection twice a year. The time per response is one hour.

6. *An estimate of the total annual cost burden associated with the collection:* The estimated annual burden is 30 hours.

7. *An estimate of the total annual cost burden associated with the collection:* The annual cost burden associated with this collection is $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Semi-Annual Progress Report for Grantees from the Tribal Sexual Assault Serv. Program	15	2	30	1	30
Unduplicated Totals	15		39		30

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 8, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10241 Filed 5–12–23; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0016]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF F 10 (5320.10)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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.

DATES: Comments are encouraged and will be accepted for 60 days until July 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional 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 Melissa Mason, Supervisory Program Analyst, National Firearms Act Division, by mail at 244 Needy Road, Martinsburg, West Virginia 25405, email at *Nfaombcomments@atf.gov,* or telephone at 304–616–4500.

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 Bureau of Justice Statistics, 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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: State and local government agencies will use the Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10) to register an otherwise un-registerable National Firearms Act (NFA). The NFA requires the registration of certain firearms under Federal Law. The Form 10 registration allows State and local agencies to comply with the NFA, and retain and use firearms that would otherwise have to be destroyed. The information collection (IC) OMB 1140–0016 (Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF F 10 (5320.10)) is being revised due to an increase in the total respondents, responses, burden hours and associated costs, since the last renewal in 2020. Additionally, the adjustments associated with this IC includes an increase in both, the total number of respondents and responses by 544. Consequently, the total public burden hours and costs for this IC has also increased by 272 hours and $171.36 respectively, since the last renewal in 2020.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF F 10 (5320.10).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 10 (5320.10). Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Federal Government, State, local or Tribal government. The obligation to respond is required to obtain or retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 862 respondents will utilize this form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 431 hours, which is equal to 862 (total respondents) * 1 (# of response per respondent) * .5 (30 minutes).

7. *An estimate of the total cost burden associated with the collection:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
ATF Form 10	862	1	862	.5	431
Unduplicated Totals	862		862		431

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: May 9, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–10235 Filed 5–12–23; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Death Gratuity

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-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 June 14, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, was enacted on January 28, 2008. Section 1105 of Public Law 110–181 amended the Federal Employees' Compensation Act (FECA) creating a new section, 5 U.S.C. 8102a effective upon enactment. This section establishes a FECA death gratuity benefit of up to $100,000 for eligible beneficiaries of Federal employees and Non-Appropriated Fund Instrumentality employees who die from injuries incurred in connection with service with an Armed Force in a contingency operation which also permits agencies to authorize retroactive payment of the death gratuity for employees who died on or after October 7, 2001 in service with an Armed Force in the theater of operations of Operation Enduring Freedom and Operation Iraqi Freedom. It also allows Federal employees to vary the order of precedence of beneficiaries or to name alternate beneficiaries and provides that the OWCP Forms CA–40, CA–41, and CA–42 are to be used to designate beneficiaries and initiate the payment process for death gratuity benefits. Form CA–40 is an optional form that requests the information necessary from the employee to accomplish this variance and to name alternate beneficiaries only if the employee wishes to do so. Form CA–41 provides the means for those named beneficiaries and possible recipients to file claims for those benefits and requests information from such claimants so that OWCP may determine their eligibility for payment. Further, the statute and regulations require agencies to notify OWCP immediately upon the death of a covered employee. CA–42 provides the means to accomplish this notification and requests information necessary to administer any claim for benefits resulting from such a death. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 30, 2023 (88 FR 5925).

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–OWCP.

Title of Collection: Death Gratuity.

OMB Control Number: 1240–0017.

Affected Public: Private sector—individuals or households, Federal Government.

Total Estimated Number of Respondents: 3.

*Total Estimated Number of Responses:*3.

Total Estimated Annual Time Burden: 1 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–10223 Filed 5–12–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation Board of Directors will meet virtually on May 19, 2023. The meeting will commence at 11:30 a.m. EDT, and will continue until the conclusion of the Committee's agenda.

PLACE:

Public Notice of Virtual Meetings: LSC will conduct the May 19, 2023 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Board of Directors meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Session:

May 19, 2023

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/83031504371?pwd=RnVsTUtTdkRCU2xYZkV6a1ZNcENoQT09*
- *Meeting ID:* 830 3150 4371
- *Passcode:* 236721

To join the Zoom meeting with one tap from your mobile phone, please click dial:

- +13052241968,,83031504371# US
- +13092053325,,83031504371# US

To join the Zoom meeting by telephone, please dial one of the following numbers:

- +1 312 626 6799 (Chicago)
- +1 646 876 9923 (New York)
- +1 301 715 8592 (Washington DC)
- +1 408 638 0968 (San Jose)
- +1 669 900 6833 (San Jose)
- +1 253 215 8782 (Tacoma)
- +1 346 248 7799 (Houston)
- *Meeting ID:* 830 3150 4371
- *Passcode:* 236721

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Announcement of Results of Recent Notational Votes
3. Consider and Act on the Board of Directors' Transmittal Letter to Accompany the Inspector General's Semiannual Report to Congress for the Period of October 1, 2022 through March 31, 2023
4. Consider and Act on Resolution #2023–XXX, Acceptance of the Draft Audited Financial Statements for Fiscal Years 2022 and 2021
5. Presentation of the Fiscal Year 2022 IRS Form 990
6. Briefing by New Inspector General
7. Public Comment
8. Consider and Act on Other Business
9. Consider and Act on Adjournment of Meeting

CONTACT PERSON FOR MORE INFORMATION: Cheryl DuHart, Administrative Coordinator, at (202) 295–1621. Questions may also be sent by electronic mail to *duhartc@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

(Authority: 5 U.S.C. 552b).

Dated: May 10, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations, Legal Services Corporation.

[FR Doc. 2023–10365 Filed 5–11–23; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–050]

Earth Science Advisory Committee; Unidentified Aerial Phenomena Independent Study Team; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Unidentified Aerial Phenomena Independent Study Team (UAPIST) Subcommittee of the Earth Science Advisory Committee. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, May 31, 2023, 10:30 a.m.–2:30 p.m. eastern time.

ADDRESSES: Public attendance will be virtual only, broadcast at *https://www.nasa.gov/live/.*

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Evans, Designated Federal Officer, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, via email at *daniel.a.evans@nasa.gov,* (202) 358–3882.

SUPPLEMENTARY INFORMATION: This meeting will be broadcast live at *https://www.nasa.gov/live/,* and public participation is available by submitting and upvoting questions at *https://nasa.cnf.io/sessions/hh4r/* starting approximately two weeks before the date of the meeting. Further information on the UAPIST may be found at *https://science.nasa.gov/uap.*

The agenda for the meeting includes the following topics:

—NASA Senior Leadership perspective
—Department of Defense and Intelligence community perspective
—Pathways for scientific analysis of Unidentified Aerial Phenomena
—Preliminary findings of the Unidentified Aerial Phenomena Independent Study Team

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–10219 Filed 5–12–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2023–027]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on June 8, 2023, from 10 a.m. to 12:30 p.m. EDT. You must register by 11:59 p.m. EDT June 6, 2023, to attend.

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agendas and meeting materials: We will post all meeting materials, including the agenda, at *https://www.archives.gov/ogis/foia-advisory-committee/2022-2024-term.*

This meeting will be the fifth of the 2022–2024 committee term. The purpose of the meeting will be to hear about a new FOIA Reference Model, a specification that business and technical stakeholders can use to analyze FOIA programs and technology, and to hear reports from each of the three subcommittees: Implementation, Modernization, and Resources.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). If you wish to offer oral public comments during the public comments periods of the meetings, you must register in advance through Eventbrite *https://foia-advisory-committee-mtg-june-8.eventbrite.com.* You must provide an email address so that we can provide you with information to access the meeting online. Public comments will be limited to three minutes per individual. We will also live-stream the meeting on the National Archives YouTube channel, *https://www.youtube.com/user/usnationalarchives,* and include a captioning option. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Tasha Ford,

Committee Management Officer.

[FR Doc. 2023–10233 Filed 5–12–23; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's (NSB) Committee on Science and Engineering Policy (SEP) hereby gives notice of the scheduling of a videoconference 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: Friday, May 19, 2023, from 12 p.m.–1:30 p.m. EDT.

PLACE: The meeting will be held by videoconference through the National Science Foundation.

STATUS: Open.

MATTERS TO BE CONSIDERED: Chair's opening remarks; Detailed Narrative Outline for *Indicators* report: *The State of U.S. Science and Engineering;* Detailed Narrative Outline for *Indicators* report: *R&D: U.S. and International Comparisons.*

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is Chris Blair, *cblair@nsf.gov,* 703/292–7000. Members of the public can observe this meeting through a YouTube livestream. The YouTube link will be available from the NSB meetings webpage—*https://www.nsf.gov/nsb/meetings/index.jsp.*

Christopher Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2023–10415 Filed 5–11–23; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Industry-University Cooperative Research Centers (IUCRC) Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following request for revision of the approved collection of research and development data in accordance with 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 renewal 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, VA 22314; 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).

SUPPLEMENTARY INFORMATION: 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.

Title of Collection: Grantee Reporting Requirements for the Industry-University Cooperative Research Centers (IUCRC) Program.

OMB Number: 3145–0088.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project

The IUCRC program provides a structure for academic researchers to conduct fundamental, pre-competitive research of shared interest to industry and government organizations. These organizations pay membership fees to a consortium so that they can collectively envision and fund research, with at least 90% of Member funds allocated to the direct costs of these shared research projects.

IUCRCs are formed around research areas of strategic interest to U.S. industry. Industry is defined very broadly to include companies (large and small), startups and non-profit organizations. Principal Investigators form a Center around emerging research topics of current research interest, in a pre-competitive space but with clear pathways to applied research and commercial development. Industry partners join at inception, as an existing Center grows, or they inspire the creation of a new Center by recruiting university partners to leverage NSF support. Government agencies participate in IUCRCs as Members or by partnering directly with NSF at the strategic level.

Universities, academic researchers, and students benefit from IUCRC participation through the research funding, the establishment and growth of industry partnerships, and educational and career placement opportunities for students. Industry Members benefit by accessing knowledge, facilities, equipment, and intellectual property in a highly cost-efficient model; leveraging Center research outcomes in their future proprietary projects; interacting in an informal, collaborative way with other private sector and government entities with shared interests; and identifying and recruiting talent. NSF provides funding to support Center administrative costs and a governance framework to manage membership, operations, and evaluation.

Sites within Centers will be required to provide data to NSF and/or its authorized representatives (contractors and/or grantees) annually—after the award expires for their fiscal year of activity—for the life of the Phase I, and if applicable, Phase II, and Phase III award(s).

Information collected are both quantitative and descriptive; they will provide managing Program Directors a means to monitor the operational and financial states of the Centers and ensure that the award is in good standing. These data will also allow NSF to assess the Centers in terms of intellectual, broader, and commercial impacts that are core to our review criteria. Finally, in compliance with the Evidence Act of 2019, information collected will be used in satisfying congressional requests, and supporting the agency's policymaking and reporting needs.

In addition to the agency's annual report requirement, Principal Investigators (IUCRC Center and Site Directors) of the awards are required to provide the following information:

Center-Related Information:

- *Center Data Reporting*
  - A comprehensive annual survey collecting information on structure, funding, membership, personnel, and outcomes of the Center during a given reporting period. A Center must submit data for each fiscal year no later than September 30 of each year of operation, as well as after the award expires to describe its final year of activity.

Certification of Membership

- A list of members and membership fees collected by the Center and certified by the respective university's Sponsored Research Office (SRO), Total Program Income collected during the reporting period, In-kind Contributions during the reporting period, Allocation and Expenditures of each Site's research funds by project

Site Research Projects Summary

- A list all projects in which the Site participated, including each project's goals; research tasks; key milestones, metrics/deliverables; developing results or outcomes; project budgets; and personnel.

- *Assessment Coordinator Report*
  - An independent assessment of the annual Center activities (this report is done by an independent evaluator, and uploaded by the Principal Investigator as part of the NSF annual reporting requirement).

Logistical Information:

- *IUCRC Directory*
  - IUCRCs must provide accurate and current information for the online IUCRC directory. The IUCRC program helps awardees to get their information updated on the website.

Optional:

- *IUCRC Impact Stories for Public Distribution*

IUCRCs are highly encouraged to submit information on their emerging research highlights and significant breakthrough stories to NSF to showcase their impact to the public and industry (see *https://iucrc.nsf.gov/centers/achievements/*) including new products, technology creation and/or enhancements, intellectual property of significant commercial relevance, and major improvements in cost-savings,

efficiency, sustainability, productivity, and job growth.

Not only do these data provide valuable information on program activities, products, outcomes, and impact, they also help to paint a detailed longitudinal view of the program, provide insights for benchmarking individual Center performance, advancing industry-university engagement approaches, strengthening future workforce, and contribute to the Nation's research and technology ecosystem.

Use of the Information: The information collected is for internal use by NSF, sharing with the US public, congressional requests, and for securing future funding for continued IUCRC program maintenance and growth. Survey data is collected and published at *https://iucrcstats.org,* made possible through NSF grant award 1732084.

Estimate Burden on the Public: Estimated at 16 hours per award for 225 sites for a total of 3,600 hours (per year).

Respondents: IUCRC Awardees (Academic Institutions).

Estimated Number of Respondents: One from each IUCRC site (estimated: 225 active sites/year).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

Dated: May 10, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–10285 Filed 5–12–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following request for revision of the approved collection of research and development data in accordance with 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 renewal 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, VA 22314; 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).

SUPPLEMENTARY INFORMATION: 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.

Title of Collection: Grantee Reporting Requirements for the Emerging Frontiers in Research and Innovation Program.

OMB Number: 3145–0233.

Type of Request: Revision to and extension of approval of an information collection.

Proposed Project: The Emerging Frontiers in Research and Innovation (EFRI) program recommends, prioritizes, and funds interdisciplinary initiatives at the emerging frontier of engineering research and education. These investments represent transformative opportunities, potentially leading to: new research areas for NSF, ENG, and other agencies; new industries or capabilities that result in a leadership position for the country; and/or significant progress on a recognized national need or grand challenge.

Established in 2007, EFRI supports cutting-edge research that is difficult to fund through other NSF programs, such as single-investigator grants or large research centers. EFRI seeks high-risk opportunities with the potential for a large payoff where researchers are encouraged to stretch beyond their ongoing activities. Based on input from workshops, advisory committees, technical meetings, professional societies, research proposals, and suggestions from the research community, the EFRI program identifies those emerging opportunities and manages a formal process for funding their research. The emerging ideas tackled by EFRI are ''frontier'' because they not only push the understood limits of engineering but actually overlap multiple fields. The EFRI funding process inspires investigators with different expertise to work together on one emerging concept.

EFRI awards require multi-disciplinary teams of at least one Principal Investigator and two Co-Principal Investigators. The anticipated duration of all awards is 4-years. With respect to the anticipated funding level, each project team may receive support of up to a total of $2,000,000 spread over four years, pending the availability of funds. In this respect, EFRI awards are above the average single-investigator award amounts.

EFRI-funded projects could include research opportunities and mentoring for educators, scholars, and university students, as well as outreach programs that help stir the imagination of K–12 students, often with a focus on groups underrepresented in science and engineering.

We are seeking to collect additional information from the grantees about the outcomes of their research that goes above and beyond the standard reporting requirements used by the NSF and spans over a period of 5 years after the award. This data collection effort will enable program officers to longitudinally monitor outputs and outcomes given the unique goals and purpose of the program. This is very important to enable appropriate and accurate evidence-based management of the program and to determine whether or not the specific goals of the program are being met.

Grantees will be requested to submit this information on an annual basis to support performance review and the management of EFRI grants by EFRI

officers. EFRI grantees will be requested to submit these indicators to NSF via a data collection website that will be embedded in NSF's IT infrastructure. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel and students; sources of complementary funding and in-kind support to the EFRI project; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; descriptions of significant advances and other outcomes of the EFRI effort.

Each submission will address the following major categories of activities: (1) knowledge transfer across disciplines, (2) innovation of ideas in areas of great opportunity, (3) potential for translational research, (4) project results that advance the frontier/creation of new fields of study, (5) introduction to the classroom of innovative research methods or discoveries, (6) fostering participation of underrepresented groups in science, and (7) impacting student career trajectory. For each of the categories, the report will enumerate specific outputs and outcomes.

Use of the Information: The data collected will be used for NSF internal reports, historical data, and performance review by peer site visit teams, program level studies and evaluations, and for securing future funding for continued EFRI program maintenance and growth.

Estimate of Burden: Approximately 7 hours per grant for approximately 100 grants per year for a total of 700 hours per year.

Respondents: Principal Investigators who lead the EFRI grants, and co-Principal Investigators and trainees involved in EFRI-funded research.

Estimated Number of Responses per Report: One report collected for each of the approximately 100 grantees every year, including sub-reports from co-PIs and trainee researchers.

Dated: May 10, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–10339 Filed 5–12–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–38415; NRC–2023–0090]

Rare Element Resources, Inc.; Upton Pilot Project

AGENCY: Nuclear Regulatory Commission.

ACTION: License application; opportunity to request a hearing and to petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a license application from Rare Element Resources, Inc. which authorizes possession and use of source material associated with its Upton Pilot Project. The Upton Pilot Project includes a mined ore pile in the Black Hills National Forest in Crook County, Wyoming for the purpose of extracting rare earth element ores, and a rare earth element processing plant in Upton, Wyoming. Because the license application contains Sensitive Unclassified Non-Safeguards Information (SUNSI), an order imposes procedures to obtain access to this type of information for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by July 14, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by May 25, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0090 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for NRC–2023–0090. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. Eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Martha Poston-Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 817–200–1181; email: *Martha.Poston-Brown@nrc.gov.*

I. Introduction

The NRC has received by letters dated May 4, August 26, September 13, and September 30, 2022, and April 7, 2023, an application from Rare Element Resources, Inc., to possess and use up to 10 curies of unsealed and non-volatile thorium hydroxide and to possess and use unlimited quantities of unsealed, non-volatile source material in any bound form. The source material will be uranium and thorium in their natural isotopic abundance in concentrations greater than 0.05 percent by weight. The NRC staff will document its review of this license application in a safety evaluation report and an environmental assessment.

II. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	Adams accession No.
Rare Element Resources, Inc., Demonstration License Application, dated May 4, 2022	ML22130A014.
Rare Element Resources, Inc., Response to Request for Supplemental Information, dated August 26, 2022	ML22238A107.
Rare Element Resources, Inc., License Application, Technical Report, and Environmental Report, September 2022	ML22256A319 (Package).
Rare Element Resources, Inc., Response to Request for Additional Information—Safety Evaluation, dated April 7, 2023.	ML23097A072.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive

Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: May 10, 2023.

For the Nuclear Regulatory Commission.

Brooke P. Clark,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2023–10312 Filed 5–12–23; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–147 and CP2023–150]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 17, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–147 and CP2023–150; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 137 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 9, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* May 17, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–10301 Filed 5–12–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97461; File No. SR–CboeBZX–2023–028]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 9, 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 25, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), 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 list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] [6] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[7] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[8] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

[6] The Exchange notes that two different proposals to list and trade shares of the Trust were disapproved by the Commission on March 31, 2022 and January 26, 2023. *See* Exchange Act Release Nos. 94571 (March 31, 2022), 87 FR 20014 (April 6, 2022) and 96751 (January 26, 2023), 88 FR 628 (January 31, 2023).

[7] *See* draft Registration Statement on Form S–1, dated June 28, 2021 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[9] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket

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Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [10]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the CME Bitcoin Futures market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[11] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized exchanges that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open-source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin

Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[10] *See* Winklevoss Order at 37592.

[11] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

Network—gives bitcoin its value.[12] The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[13] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[14] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[15] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[16] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[17] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[18] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [19] and shares in investment vehicles holding bitcoin futures.[20] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [21] in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [22] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [23] in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[24] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[25]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[26] According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated bitcoin futures represented between $750 million and $3.2 billion in notional trading volume on Chicago Mercantile Exchange (''CME'') (''Bitcoin Futures'') on a daily basis.[27] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[28] As of

[12] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms;* and *https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.*

[13] *See* Winklevoss Order.

[14] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[15] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[16] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[17] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[18] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[19] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[20] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[21] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[22] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[23] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[24] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[25] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[26] As of February 1, 2023, the total market cap of all bitcoin in circulation was approximately $450 billion.

[27] Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[28] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/*

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February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[29] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian.[30] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[31]

In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') Report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [32] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[33] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [34] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [35] or (iv) purchasing Bitcoin Futures ETFs, as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to Exchange Traded Products (issued by 21Shares, among others) which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[36]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[37] Celsius Network LLC,[38] BlockFi Inc.[39] and Voyager Digital Holdings, Inc.[40] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, its likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this

download. Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[29] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[30] The ''Custodian'' is Coinbase Trust Company, LLC.

[31] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[32] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[33] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[34] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[35] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[36] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[37] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[38] *See* Celsius Network LLC, et al., Case No. 22–10964.

[39] *See* BlockFi Inc., Case No. 22–19361.

[40] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. exchange-traded funds and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[41] Leaving aside the analysis of that standard until later in this proposal,[42] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[43]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit'' [44] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures. As further discussed below, this view is also consistent with the Advisor's research.

Further to this point, a Bitcoin Futures ETF is potentially more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because settlement of CME Bitcoin Futures (and thus the value of the underlying holdings of a Bitcoin Futures ETF) occurs at a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. It is not logically possible to conclude that the CME Bitcoin Futures market represents a significant market for a futures-based product, but also conclude that the CME Bitcoin Futures market does not represent a significant market for a spot-based product.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[45] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors

[41] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[42] As further outlined below, both the Exchange and the Sponsor believe that the CME Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[43] *See* Teucrium Approval at 21679.

[44] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142.

[45] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Bitcoin Futures ETFs and Spot Bitcoin ETPs as warranted based on the Commission's concerns about the custody of physical Bitcoin that a Spot Bitcoin ETP would hold (compared to cash-settled futures contracts),[46] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with the Custodian to provide, as further outlined below. In the Custody Statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While bitcoin is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's bitcoin. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's bitcoin holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the NYDFS, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot bitcoin custody justifies differential treatment of a Bitcoin Futures ETF versus a Spot Bitcoin ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and safeguards in handling spot bitcoin that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Bitcoin Futures ETF compared to a Spot Bitcoin ETP differently due to spot bitcoin custody concerns.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures[47]

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[48] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch.

According to the Sponsor, the increase in the volume on CME, over the past few years, is reflected in a higher proportion of the bitcoin market share. This is illustrated by plotting the proportion of monthly volume traded in bitcoin on the CME[49] (categorized as regulated in the chart and used as the numerator) in relation to the total bitcoin market, which is comprised of the sum of the volume of bitcoin futures on the CME and the spot volume on cryptocurrency exchanges[50] (categorized as unregulated and used as the denominator) from January 1, 2018 to January 31, 2023.

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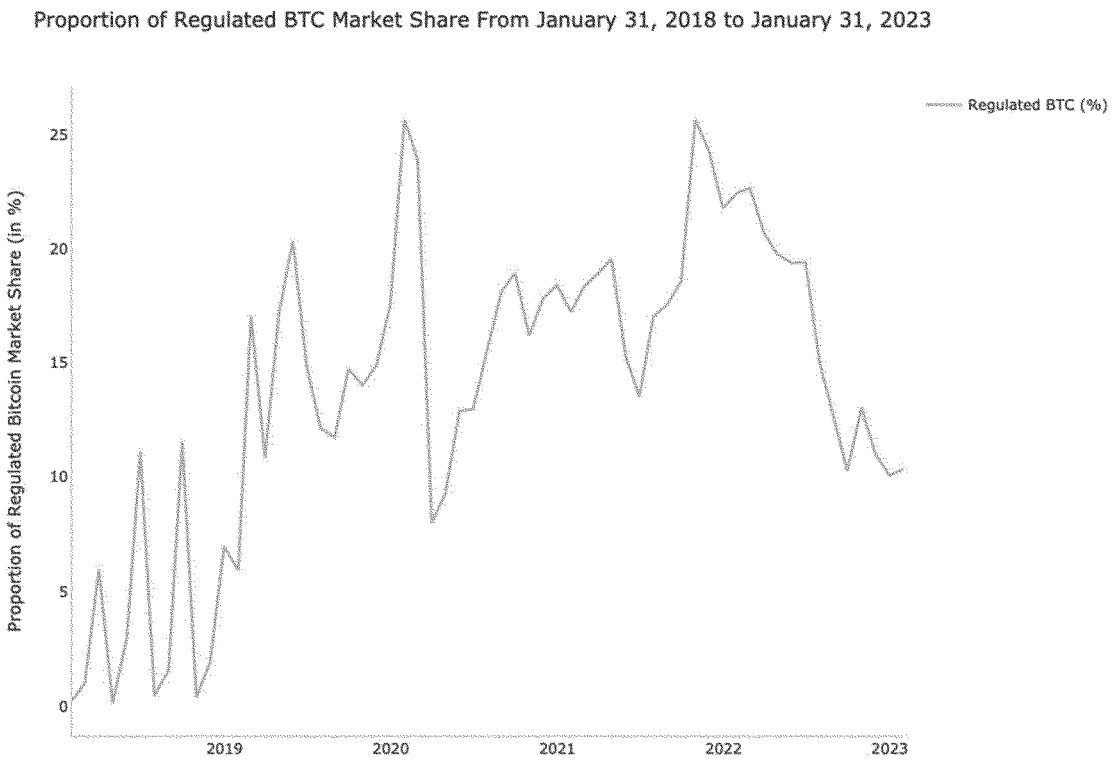
[46] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

[47] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

[48] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

[49] Data on Bitcoin futures is available at *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.html.*

[50] Data on Bitcoin volume traded on cryptocurrency exchanges is available at *https://www.cryptocompare.com.*



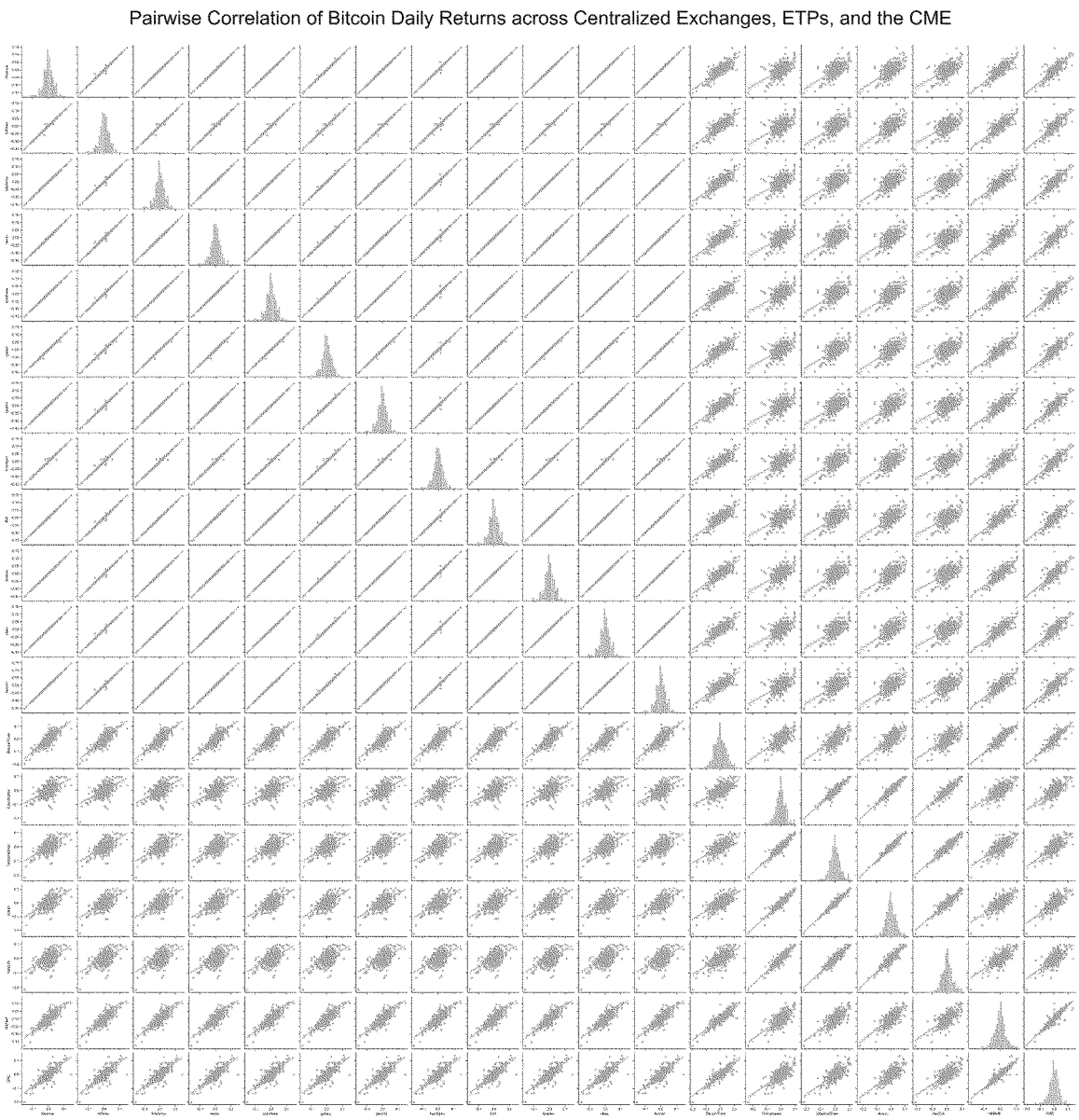
The proportion of volume traded on CME has increased from less than 1% at inception, to more than 10% over three and a half years. Furthermore, the CME market, as well as other crypto-linked markets, and the spot market are highly correlated. In markets that are globally and efficiently integrated, one would expect that changes in prices of an asset across all markets to be highly correlated. The rationale behind this is that quick and efficient arbitrageurs would capture potentially profitable opportunities, consequently converging prices to the average intrinsic value very rapidly.

Bitcoin markets exhibit a high degree of correlation. Using daily Bitcoin prices from centralized exchanges, ETP providers, and the CME from January 20, 2021 to February 1, 2023,[51] the Sponsor calculates the Pearson correlation of returns [52] across these markets and find a high degree of correlation.

Correlations are between 57% and 99%, with the latter found mainly across centralized exchanges due to their higher level of interconnectedness. The lower correlations pertain mainly to the ETPs, which are relatively newer products and are mainly offered by a few competing market makers who are required to trade in large blocks, thus making it economically infeasible to capture small mispricings. As additional investors and arbitrageurs enter the market and capture the mispricing opportunities between these markets, it is likely that there will be much higher levels of correlations across all markets.

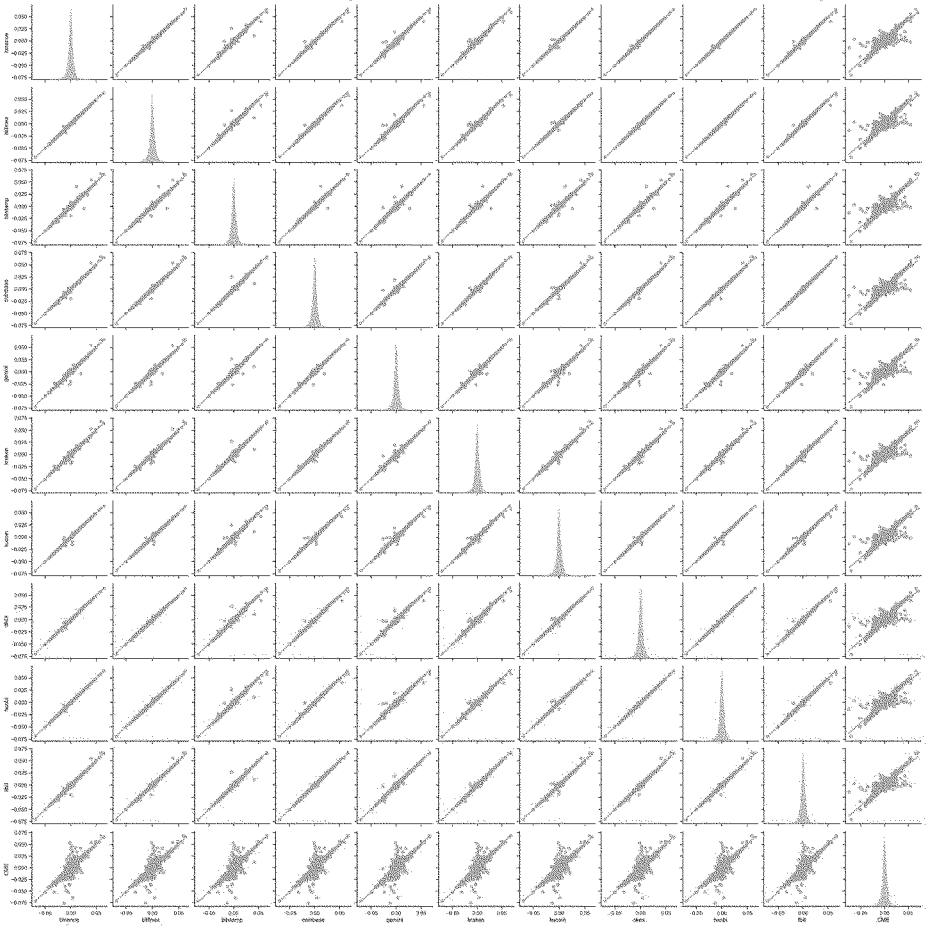
[51] The calculation of daily correlations used the period January 20, 2021 to February 1, 2023 as this is the common period across all the exchanges and data sources being analyzed.

[52] The Pearson correlation is a measure of linear association between two variables and indicates the magnitude as well as direction of this relationship. The value can range between −1 (suggesting a strong negative association) and 1 (suggesting a strong positive association).

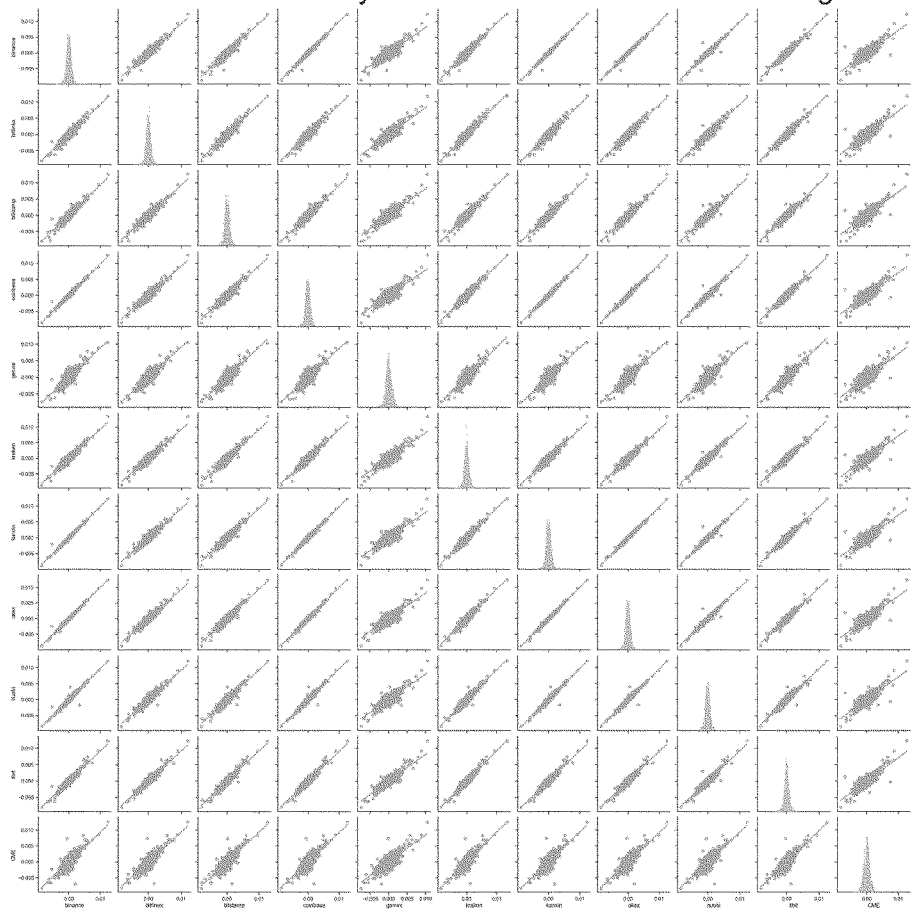


Pair-wise correlations of Bitcoin returns are also calculated on hourly and minute-by-minute sampling frequencies in order to estimate the intra-day associations across the different Bitcoin markets. The results show correlations no less than 92% among centralized exchanges and between the Bitcoin CME futures and centralized exchanges on an hourly basis, and no less than 78% on a minutely basis. This suggests that Bitcoin prices on centralized exchanges and the CME markets move very similarly and in a very efficient manner to quickly reflect changes in market conditions, not only on a daily basis, but also at much higher intra-day frequencies.

Pairwise Correlation of Bitcoin Hourly Returns across Centralized Exchanges and the CME



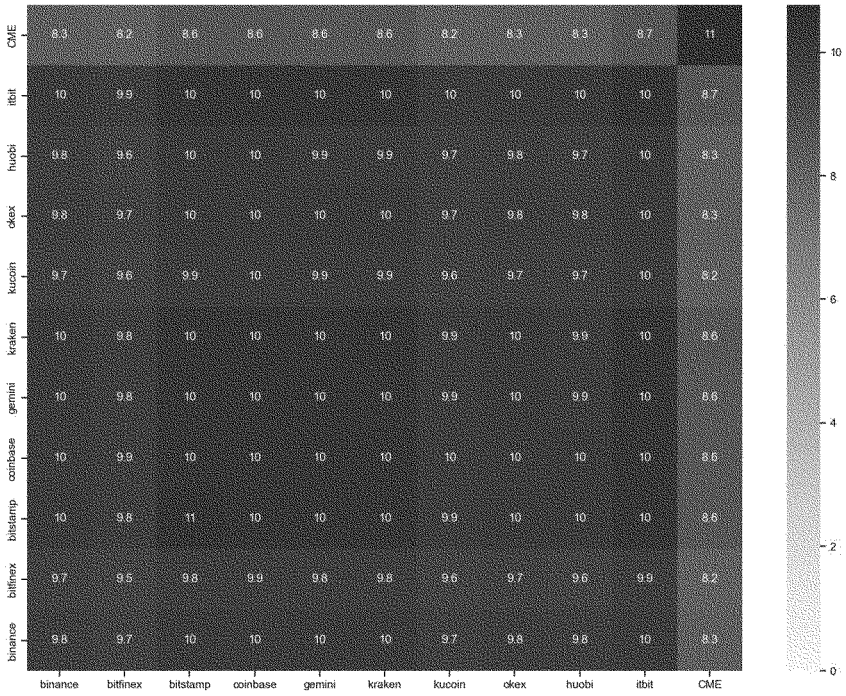
Pairwise Correlation of Bitcoin Minutely Returns across Centralized Exchanges and the CME



According to the Sponsor's research, this relationship holds true during periods of extreme price volatility. This implies that no single Bitcoin market can deviate significantly from the consensus, such that the market is sufficiently large and has an inherent unique resistance to manipulation. Hence, the Sponsor introduces a statistical co-moment called co-kurtosis, which measures to what extent two random variables change together.[53] If two returns series exhibit a high degree of co-kurtosis, this means that they tend to undergo extreme positive and negative changes simultaneously. A co-kurtosis value larger than +3 or less than −3 is considered statistically significant. The following table shows that the level of co-kurtosis is positive and very high between all market combinations of hourly returns, which suggests that Bitcoin markets tend to move very similarly especially for extreme price deviations.

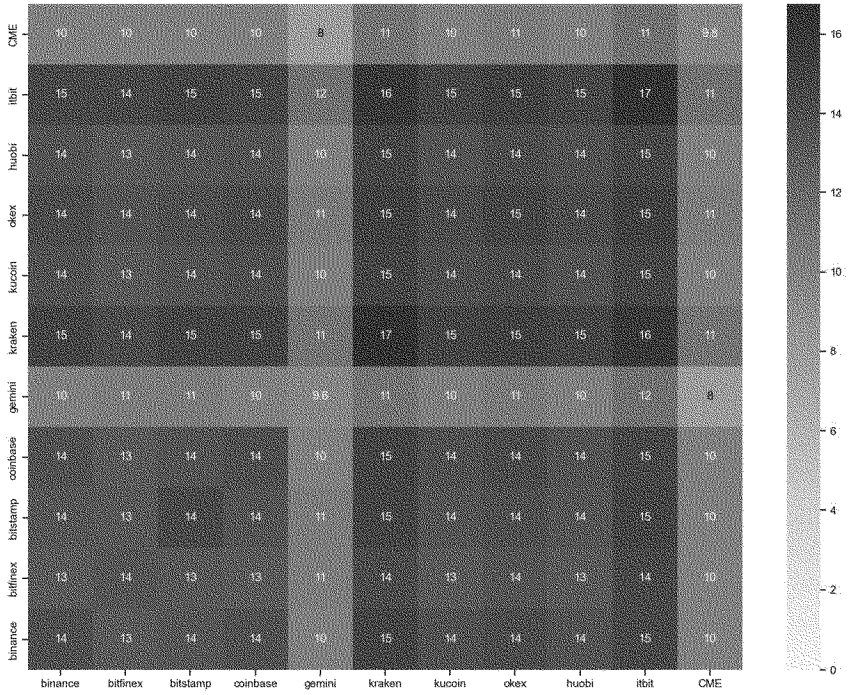
[53] Co-skewness and Co-kurtosis are higher order cross-moments used in finance to examine how assets move together. Co-skewness measures the extent to which two variables undergo extreme deviations at the same time, whereby a positive (negative) value means that both values exhibit positive (negative) values simultaneously. While this measure is useful for estimating co-movements in one direction or the other, it does not allow us to test whether two variables comove similarly in either direction. For that, we apply the co-kurtosis, which measures the extent to which two variables undergo both extreme positive and negative deviations at the same time.

Co-kurtosis of Bitcoin Hourly Returns across Centralized Exchanges, ETPs, and the CME



As a robustness check, the co-kurtosis metric is also calculated using minute-by-minute returns, and the conclusion remains the same, suggesting that all Bitcoin markets move in tandem especially during extreme market movements.

Co-kurtosis of Bitcoin Minutely Returns across Centralized Exchanges, ETPs, and the CME



These results present evidence of a robust global Bitcoin market that quickly reacts in a unanimous manner to extreme price movements across both the spot markets, futures and ETP markets.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[54]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[55] including Commodity-Based Trust Shares,[56] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [57] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin

[54] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.'' *See also* Matthew Hougan, Hong Kim, and Satyajeet Pal (2021). ''Price Discovery in the Modern Bitcoin Market: Examining Lead-Lag Relationships Between the Bitcoin Spot and Bitcoin Futures Market'' (available at *https://static.bitwiseinvestments.com/Bitwise-Bitcoin-ETP-White-Paper-1.pdf*). This academic research paper also concluded that ''the CME bitcoin futures market is the dominant source of price discovery when compared with the bitcoin spot market, and that prices on the CME bitcoin futures market lead prices on bitcoin spot markets . . .''

[55] *See* Exchange Rule 14.11(f).

[56] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[57] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [58] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[59] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[60]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[61]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [62]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges [63] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

[58] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[59] For a list of the current members and affiliate members of ISG, see *www.isgportal.com*.

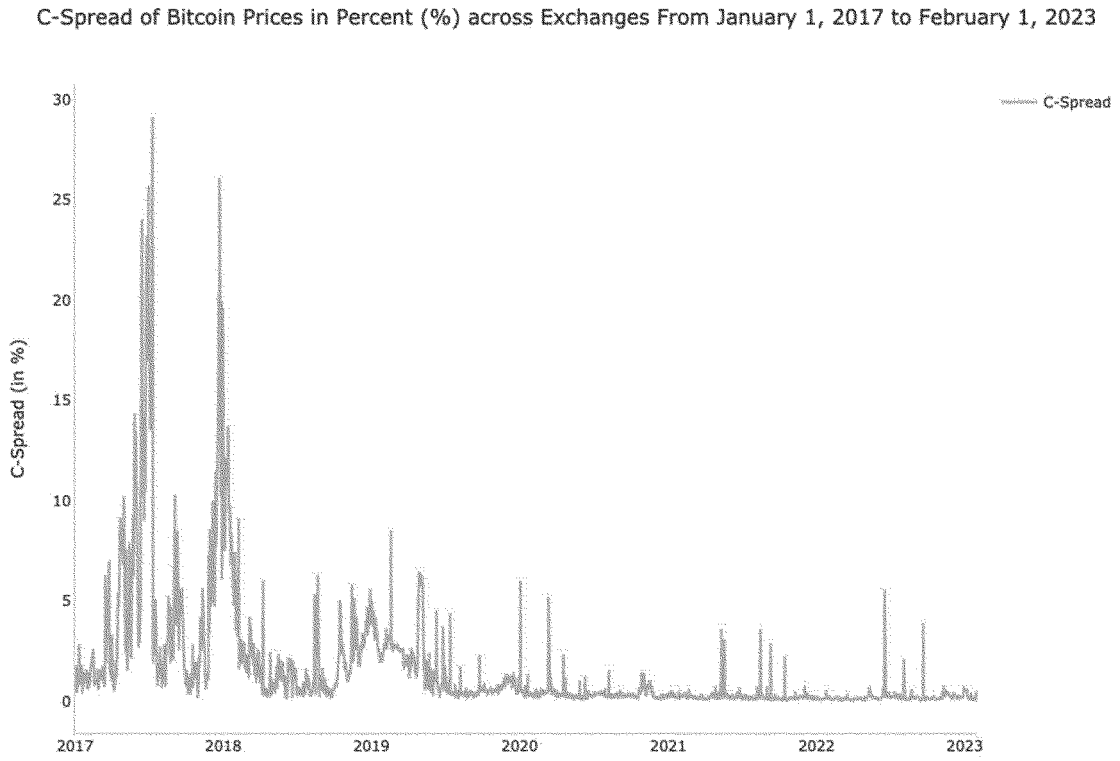
[60] *See* Wilshire Phoenix Disapproval.

[61] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

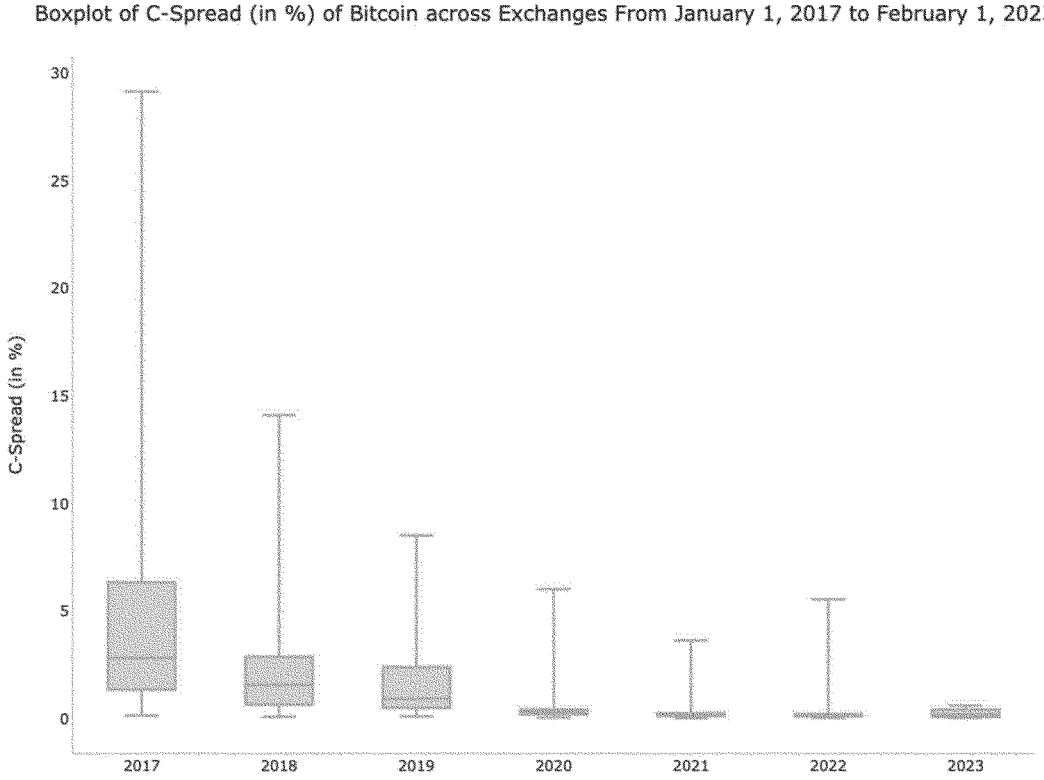
[62] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[63] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.

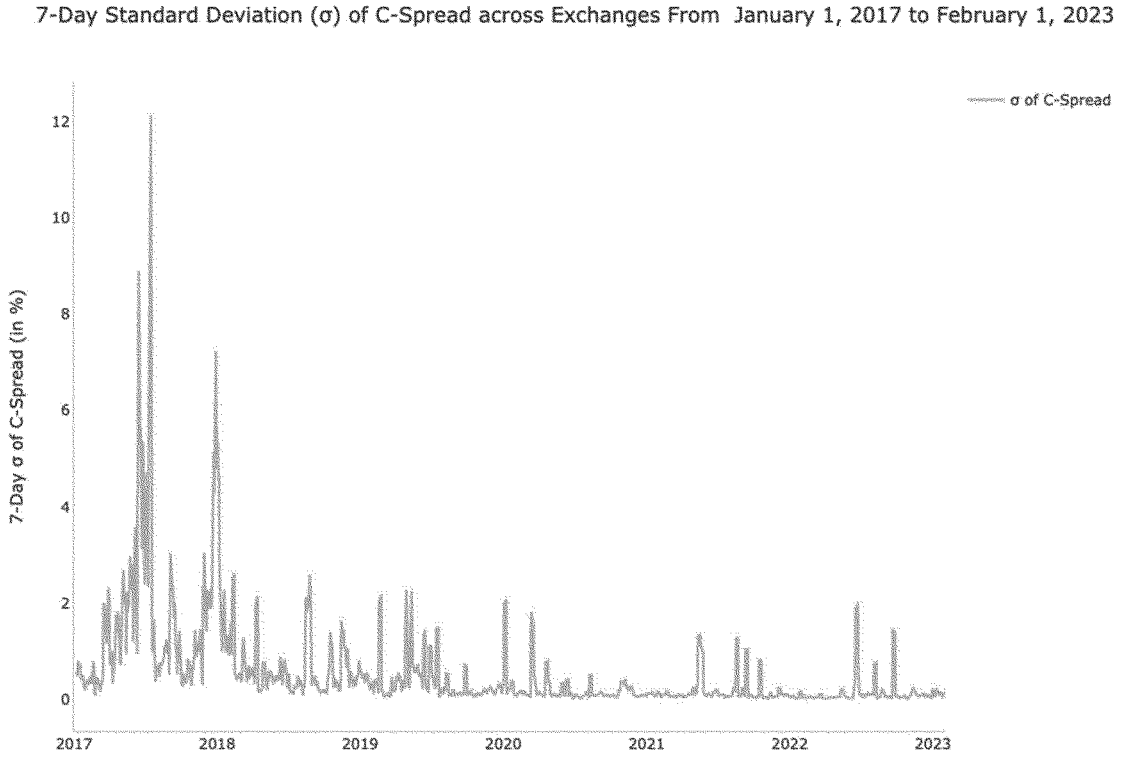


In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, 2021, 2022, and 2023 (up until February 01, 2023) are 29.14%, 14.12%, 8.54%, 6.04%, 3.65%, 5.56%, and 0.63%, respectively. The market has experienced a 38% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

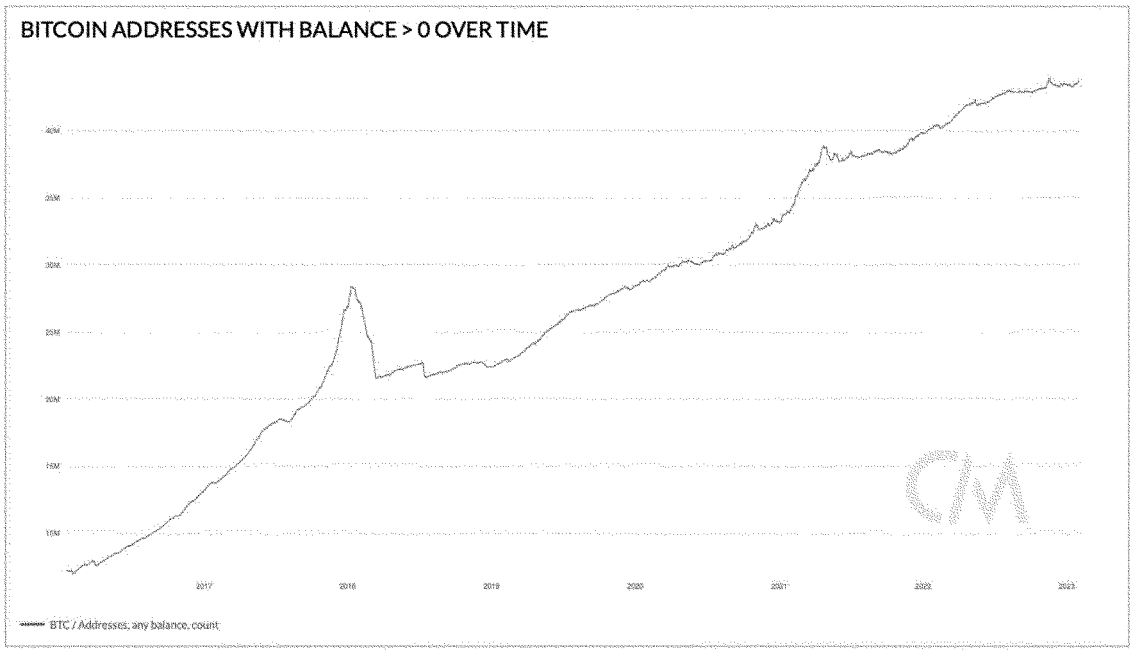


The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to February 1, 2023. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

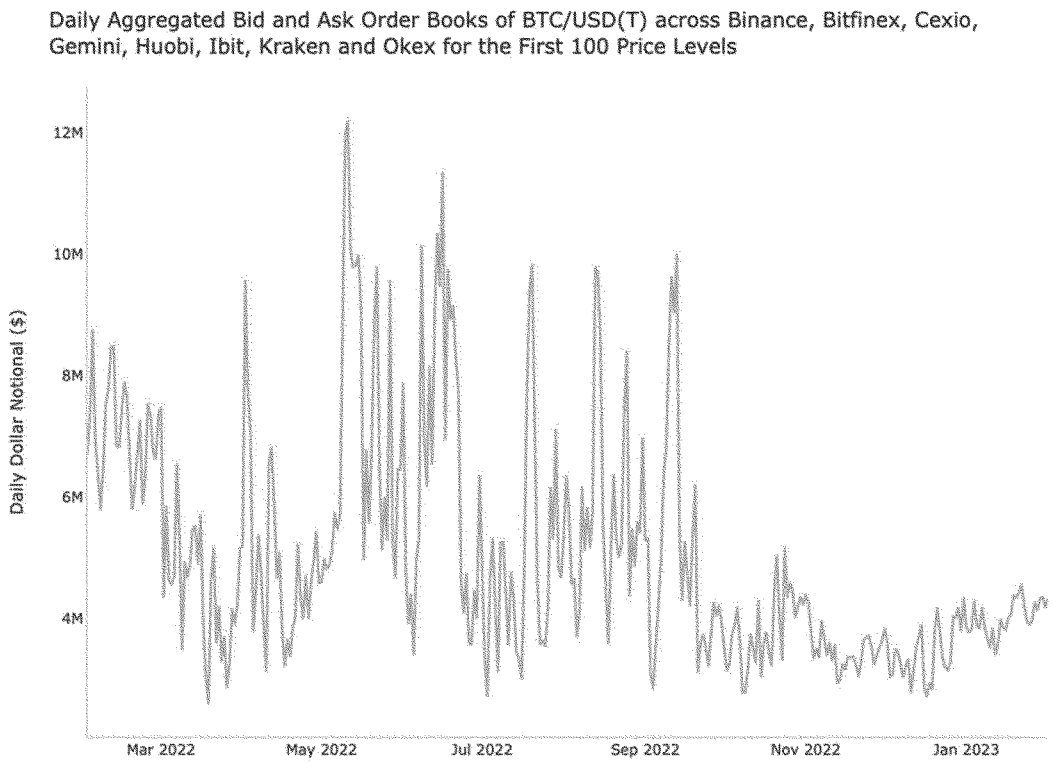
As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.



One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to February 2023.



The large number of participants in the Bitcoin market has manifested itself in high liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from February 2022 to January 2023. Specifically, the dollar notional that is allocated closest to the mid price has hovered between $2.6 million and $12 million over that period.

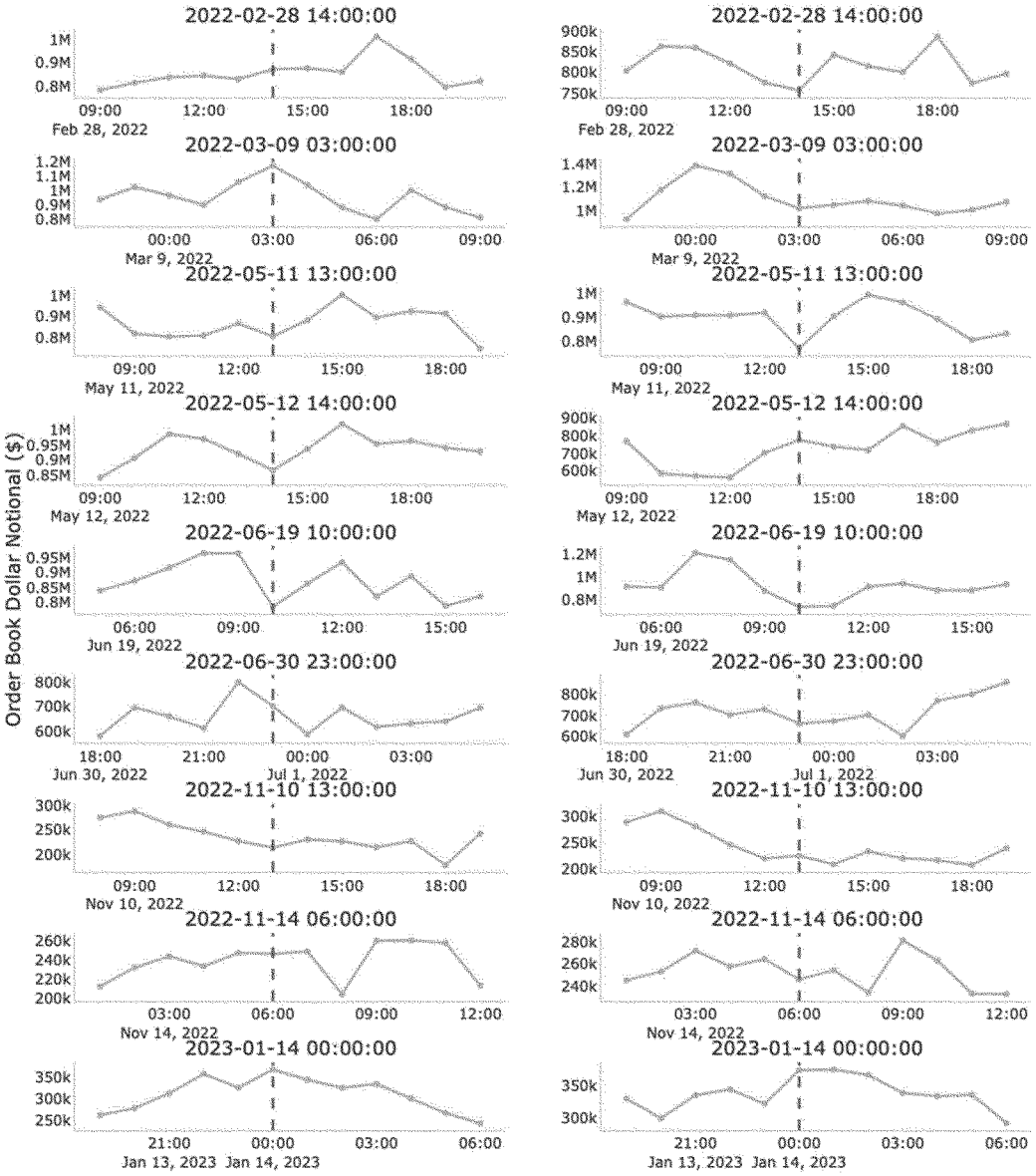


An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

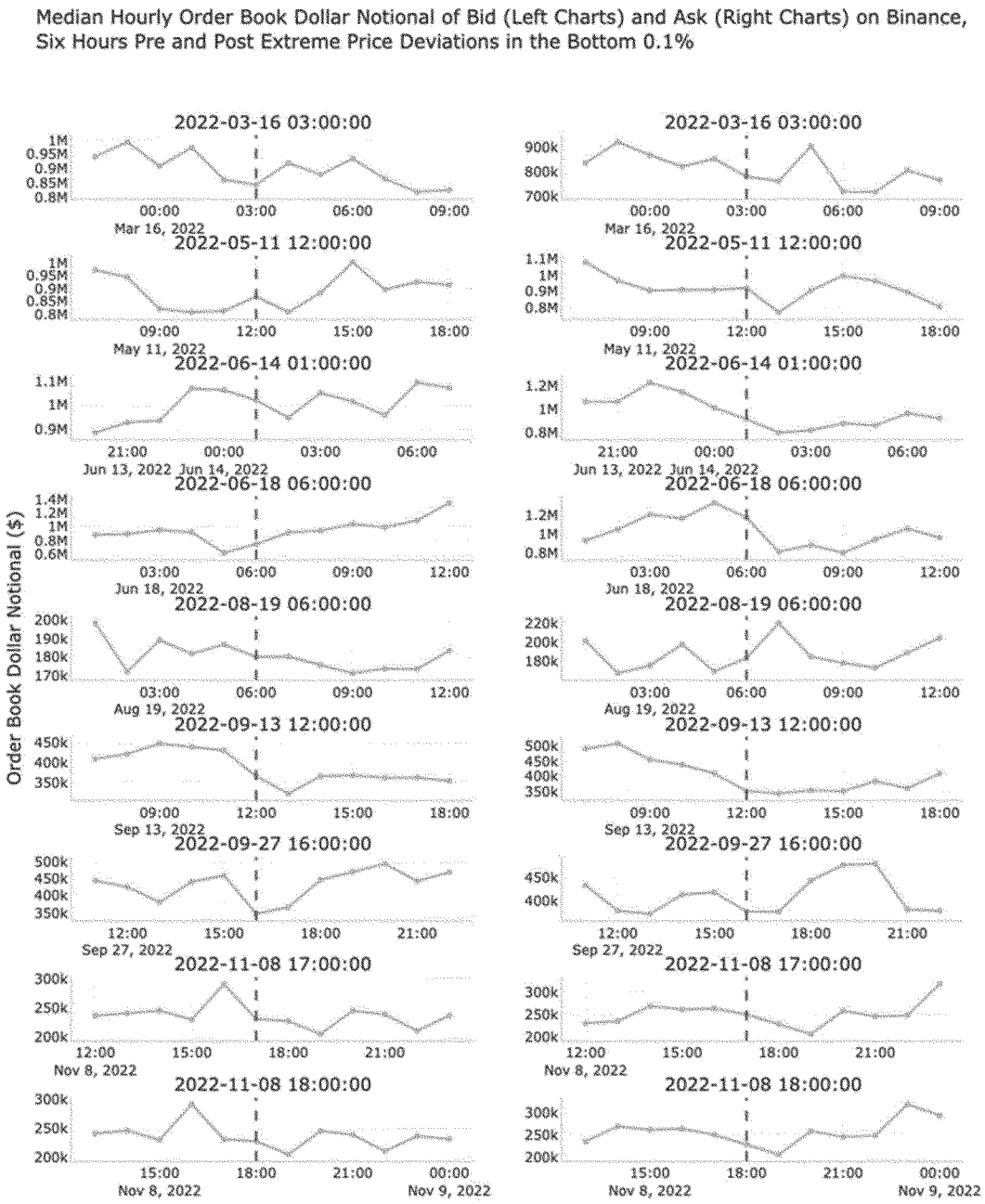
As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from February 1, 2022 to February 1, 2023 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%



The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.



BILLING CODE 8011–01–C

Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[64] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to

[64] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

ARK 21Shares Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (''ARK'') will provide assistance in the marketing of the Shares. Coinbase Custody Trust Company, LLC, a third-party regulated custodian (the ''Custodian''), will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[65] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

As noted above, the Trust is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms. Specifically, the Trust is designed to protect investors as follows:

(i) Assets of the Trust Protected From Insolvency

The Trust's bitcoin will be held by its Custodian,[66] which is a New York chartered trust company overseen by the NYDFS and a qualified custodian under Rule 206–4 of the Investment Adviser Act. The Custodian will custody the Trust's bitcoin pursuant to a custody agreement, which requires the Custodian to maintain the Trust's bitcoin in segregated accounts that clearly identify the Trust as owner of the accounts and assets held on those accounts; the segregation will be both from the proprietary property of the Custodian and the assets of any other customer. Such an arrangement is generally deemed to be ''bankruptcy remote,'' that is, in the event of an insolvency of the Custodian, assets held in such segregated accounts would not become property of the Custodian's estate and would not be available to satisfy claims of creditors of the Custodian. In addition, according to the Registration Statement, the Custodian carries fidelity insurance, which covers assets held by the Custodian in custody from risks such as theft of funds. These arrangements provide significant protections to investors and could have mitigated the type of losses incurred by investors in the numerous crypto-related insolvencies, including Celsius, Voyager, BlockFi and FTX.

(ii) Trust's Transfer Agent Will Instruct Disposition of Trust's Bitcoin

According to the Registration Statement, except with respect to sale of bitcoin from time to time to cover expenses of the Trust, the only time bitcoin will move into or out from the Trust will be with respect to creations or redemptions of Shares of the Trust. Authorized Participants will deliver bitcoin to the Trust's account with the Custodian or Subcustodian, as applicable, in exchange for Shares of the Trust, and the Trust, through the Custodian, will deliver bitcoin to Authorized Participants when those Authorized Participants redeem Shares of the Trust. The creation and redemption procedures are administered by the Transfer Agent, the Bank of New York Mellon, an independent third party. In other words, according to the Registration Statement, with very limited exceptions, the Sponsor will not give instructions with respect to the transfer or disposition of the Trust's bitcoin. Bitcoin owned by the Trust will at all times be held by, and in the control of, the Custodian (or Subcustodian, as applicable), and transfer of such bitcoin to or from the Custodian (or Subcustodian) will occur only in connection with creation and redemptions of Shares. This will provide safeguards against the movement of bitcoin owned by the Trust by or to the Sponsor or affiliates of the Sponsor.

(iii) Trust's Assets Are Subject to Regular Audit

According to the Registration Statement, audit trails exist for all movement of bitcoin within Custodian-controlled bitcoin wallets and are audited annually for accuracy and completeness by an independent external audit firm. In addition, the Trust will be audited by an independent registered public accounting firm on a regular basis.

(iv) Trust Is Subject to the Exchange's Obligations of Companies Listed on the Exchange and Applicable Corporate Governance Requirements

The Trust will be subject to the obligations of companies listed on the Exchange set forth in BZX Rule 14.6,

[65] 15 U.S.C. 80a–1.

[66] According to the Registration Statement, the Trust's cash will be held at The Bank of New York Mellon pursuant to a cash custody agreement.

which require the listed companies to make public disclosure of material events and any notifications of deficiency by the Exchange, file and distribute period financial reports, engage independent public accountants registered with the Exchange, among other things. Such disclosures serve a key investor protection role. In addition, the Trust will be subject to the corporate governance requirements for companies listed on the Exchange set forth in BZX Rule 14.10.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the performance of the S&P Bitcoin Index (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is a U.S. dollar-denominated composite reference rate for the price of bitcoin. There is no component other than bitcoin in the Index. The underlying exchanges are sourced by Lukka Inc. (the ''Data Provider'')[67] based on a combination of qualitative and quantitative metrics to analyze a comprehensive data set and evaluate factors including legal/regulation, KYC/transaction risk, data provision, security, team/exchange, asset quality/diversity, market quality and negative events. The Index price is currently sourced from the following set of exchanges: Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex. As the digital ecosystem continues to evolve, the Data Provider can add additional or remove exchanges based on the processes established by Lukka's Pricing Integrity Oversight Board.[68]

The Index methodology is intended to determine the fair market value (''FMV'') for bitcoin by determining the principal market for bitcoin as of 4 p.m. ET daily. The Index methodology uses a ranking approach that considers several exchange characteristics including oversight and intra-day trading volume. Specifically, to rank the credibility and quality of each exchange, the Data Provider dynamically assigns a Base Exchange Score (''BES'') score to the key characteristics for each exchange.

The BES reflects the fundamentals of an exchange and determines which exchange should be designated as the principal market at a given point of time. This score is determined by computing a weighted average of the values assigned to four different exchange characteristics. The exchange characteristics are as follows: (i) oversight; (ii) microstructure efficiency; (iii) data transparency and (iv) data integrity.

Oversight

This score reflects the rules in place to protect and to give access to the investor. The score assigned for exchange oversight will depend on parameters such as jurisdiction, regulation, ''Know Your Customer and Anti-Money Laundering Compliance'' (KYC/AML), among other proprietary factors.

Microstructure Efficiency

The effective bid ask spread is used as a proxy for efficiency. For example, for each exchange and currency pair, the Data Provider takes an estimate of the ''effective spread'' relative to the price.

Data Transparency

Transparency is the term used for a quality score that is determined by the level of detail of the data offered by an exchange. The most transparent exchanges offer order-level data, followed by order book, trade-level, and then candles.

Data Integrity

Data integrity reconstructs orders to ensure the transaction amounts that make up an order equal the overall order amount matching on both a minute and daily basis. This data would help expose nefarious actions such as wash trading or other potential manipulation of data.

The methodology then applies a five-step weighting process for identifying a principal exchange and the last price on that exchange. Following this weighting process, an executed exchange price is assigned for bitcoin as of 4 p.m. ET. The Index price is determined according to the following procedure:

- *Step 1:* Assign each exchange a Base Exchange Score (''BES'') reflecting static exchange characteristics such as oversight, microstructure and technology, as discussed below.
- *Step 2:* Adjust the BES based on the relative monthly volume each exchange services. This new score is the Volume Adjusted Score (''VAS'').
- *Step 3:* Decay the VAS based on the time passed since the last trade on the exchange. Here, the Data Provider is assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the exchange. This is the final Decayed Volume Adjusted Score (''DVAS''), which tracks the freshness of the data by tracking most recent trades.
- *Step 4:* Rank the exchanges by the DVAS score and designate the highest-ranking exchange as the principal market for that point in time. The principal market is the exchange with the highest DVAS.
- *Step 5:* After selecting a primary exchange, an executed exchange price is used for bitcoin representing FMV at 4 p.m. ET. The Data Provider takes the last traded prices at that moment in time on that trading venue for the relevant pair (Bitcoin/USD) when determining the Index price.

As discussed in the Registration Statement, the fact that there are multiple bitcoin spot markets that may contribute prices to the Index price makes manipulation more difficult in a well-arbitraged and fractured market, as a malicious actor would need to manipulate multiple spot markets simultaneously to impact the Index price, or dramatically skew the historical distribution of volume between the various exchanges.

[67] Lukka is an independent third-party digital asset data company engaged by the Sponsor to provide fair market value (FMV) bitcoin prices. This price, commercially available from Lukka, will form the basis for determining the value of the Trust's Bitcoin Holdings. Lukka is not affiliated with the Trust or the Sponsor other than through a commercial relationship. All of Lukka's products are also SOC 1 and 2 Type 2 certified.

[68] The purpose of Lukka's Pricing Integrity Oversight Board is to ensure (i) the integrity and validity of the Lukka pricing and valuation products and (ii) the Lukka pricing and valuation products remain fit for purpose in the rapidly evolving market and corresponding regulatory environments.

The Data Provider has designed a series of automated algorithms designed to supplement the core Lukka Prime Methodology in enhancing the ability to detect potentially anomalous price activity which could be detrimental to the goal of obtaining a Fair Market Value price that is representative of the market at a point in time.[69]

In addition to the automated algorithms, the Data Provider has dedicated resources and has established committees to ensure all prices are representative of the market. Any price challenges will result in an independent analysis of the price. This includes assessing whether the price from the selected exchange is biased according to analyses designed to recognize patterns consistent with manipulative activity, such as a quick reversion to previous traded levels following a sharp price change or any significant deviations from the volume weighted average price on a particular exchange or pricing on any other exchange included in the Lukka Prime eligibility universe. Policies and procedures for any adjustments to prices or changes to core parameters (*e.g.,* exchange selection) are described in the Lukka Price Integrity Manual.[70]

Upon detection or external referral of suspect manipulative activities, the case is raised to the Price Integrity Oversight Board. These checks occur on an on-going, intraday basis and any investigations are typically resolved promptly, in clear cases within minutes and in more complex cases same business day. The evidence uncovered shall be turned over to the Data Provider's Price Integrity Oversight Board for final decision and action. The Price Integrity Oversight Board may choose to pick an alternative primary market and may exclude such market from future inclusion in the Index methodology or choose to stand by the original published price upon fully evaluating all available evidence. It may also initiate an investigation of prior prices from such markets and shall evaluate evidence presented on a case-by-case basis.

After the Lukka Prime price is generated, the S&P DJI (''The Index Provider'') performs independent quality checks as a second layer of validation to those employed by the Data Provider, including checks against assets with large price movements, assets with missing prices, assets with zero prices, assets with unchanged prices, assets that have ceased pricing and assets where the price does not match the Lukka Prime primary exchange. The Index Provider may submit a price challenge to Lukka if any of the checks listed above are found to be material. Lukka will perform an independent review of the price challenge to ensure the price is representative of the fair value of a particular cryptocurrency. If there is a change, the process will follow that described in the Recalculation Policy found on The Index Provider Digital Assets Indices Policies & Practices and Index Mathematics Methodology.

In addition, The Index Provider currently provides the below additional quality assurance mechanisms with respect to crypto price validation. These checks are based on current market conditions, internal system processes and other assessments. The Index Provider reserves the right within its sole discretion to supplement, modify and/or remove individual checks and/or the parameters used within the checks, at any time without notice.

Crypto Price and Exchange Validation

- Check for any assets with no price received from Lukka;
- Check for any assets with a zero price received from Lukka;
- Check for any assets with a large change from the previous day. (Outliers +/− 40%);
- Check for any assets with a stale price, aggregating the number of days the price remains stale;
- Confirm the Lukka price matches the Lukka Prime primary exchange price;
- Confirm the Lukka price is consistent with other Lukka Prime exchange prices;
- Check the volume of the Lukka Prime exchanges and challenge the Lukka primary exchange if the exchange is not within the top percentile of the trading volume for that asset;
- Aggregation of Lukka Prime primary exchange changes.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[71] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index//.*

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the

[69] Upon request, Lukka can provide additional information and detail to the Commission regarding the algorithms and data quality checks that are put in place, with confidential treatment requested.

[70] Upon request, Lukka can provide the Commission the Lukka Pricing Integrity Manual, with confidential treatment requested.

[71] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin and cash less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 5,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity [72] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions

[72] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[73]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[74] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[75] in general and section 6(b)(5) of the Act[76] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Commission has approved numerous series of Trust Issued Receipts,[77] including Commodity-Based Trust Shares,[78] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[79] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

[73] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[74] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[75] 15 U.S.C. 78f.

[76] 15 U.S.C. 78f(b)(5).

[77] See Exchange Rule 14.11(f).

[78] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[79] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. The reason is that wash trading aims to manipulate the volume rather than the price of an asset to give the impression of heightened market activity in hopes of attracting investors to that asset. Moreover, wash trades are executed within an exchange rather than cross exchange since the entity executing the wash trades would aim to trade against itself, and as such, this can only happen within an exchange. Should the wash trades of that entity result in a deviation of the price on that exchange relative to others, arbitrageurs would then be able to capitalize on this mispricing, and bring the manipulated price back to equilibrium, resulting in a loss to the entity executing the wash trades. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [80] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[81] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[82]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[83]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [84]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-exchange spreads in Bitcoin have been declining consistently over the past several years. Based on the daily Bitcoin price series from several popular centralized exchanges [85] the Sponsor has calculated the largest cross-exchange percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all exchanges (i). Formally, this is expressed as:

$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

The results show a clear and sharp decline in the %C-Spread, indicating that the Bitcoin market has become more efficient as cross-exchange prices have converged over time.

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[80] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

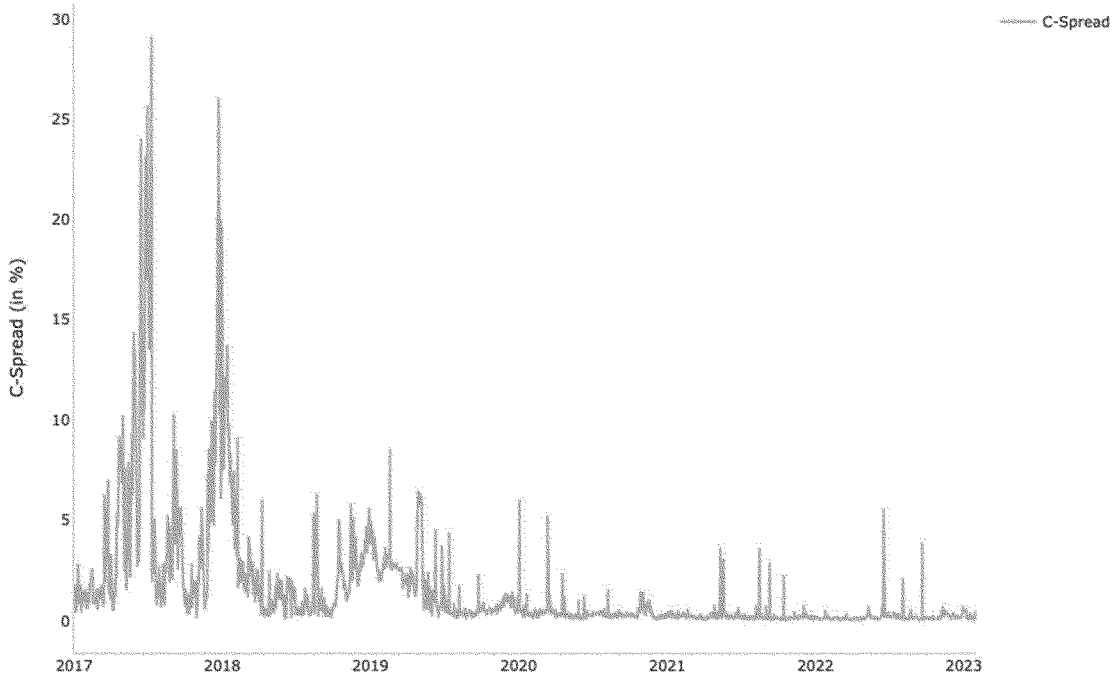
[81] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[82] *See* Wilshire Phoenix Disapproval.

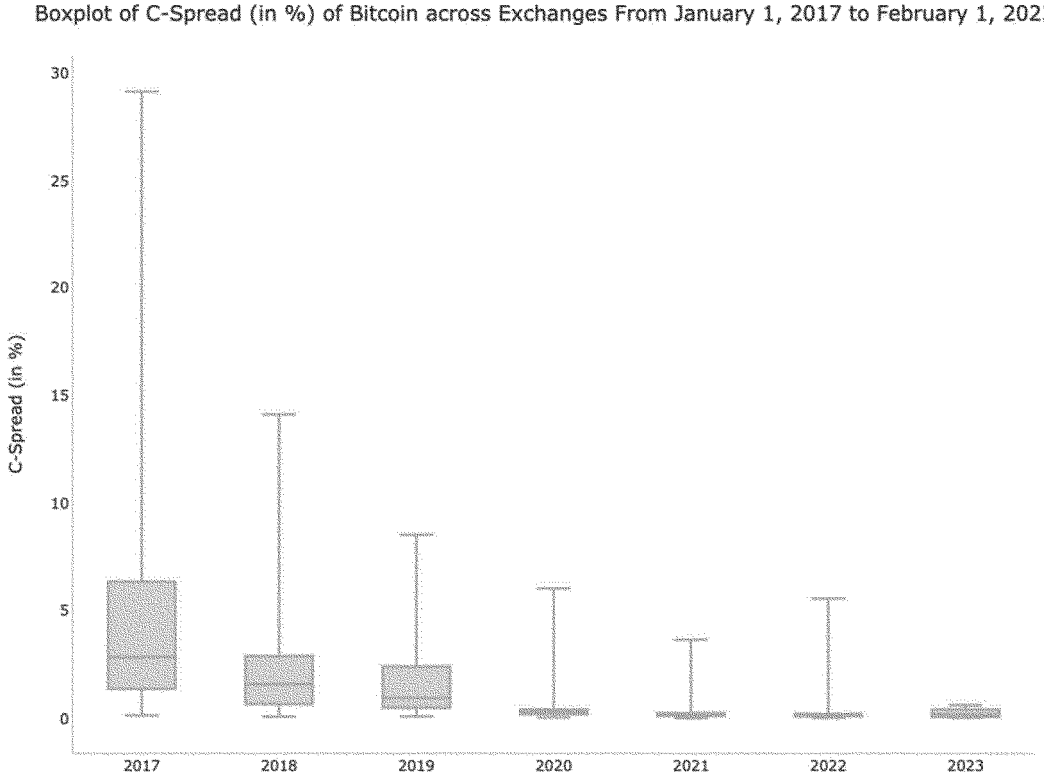
[83] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

[84] As further described below, the ''Index'' for the Fund is the S&P Bitcoin Index. The current exchange composition of the Index is Binance, Bitfinex, Bitflyer, Bittrex, Bitstamp, Coinbase Pro, Gemini, HitBTC, Huobi, Kraken, KuCoin, and Poloniex.

[85] The exchanges include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.

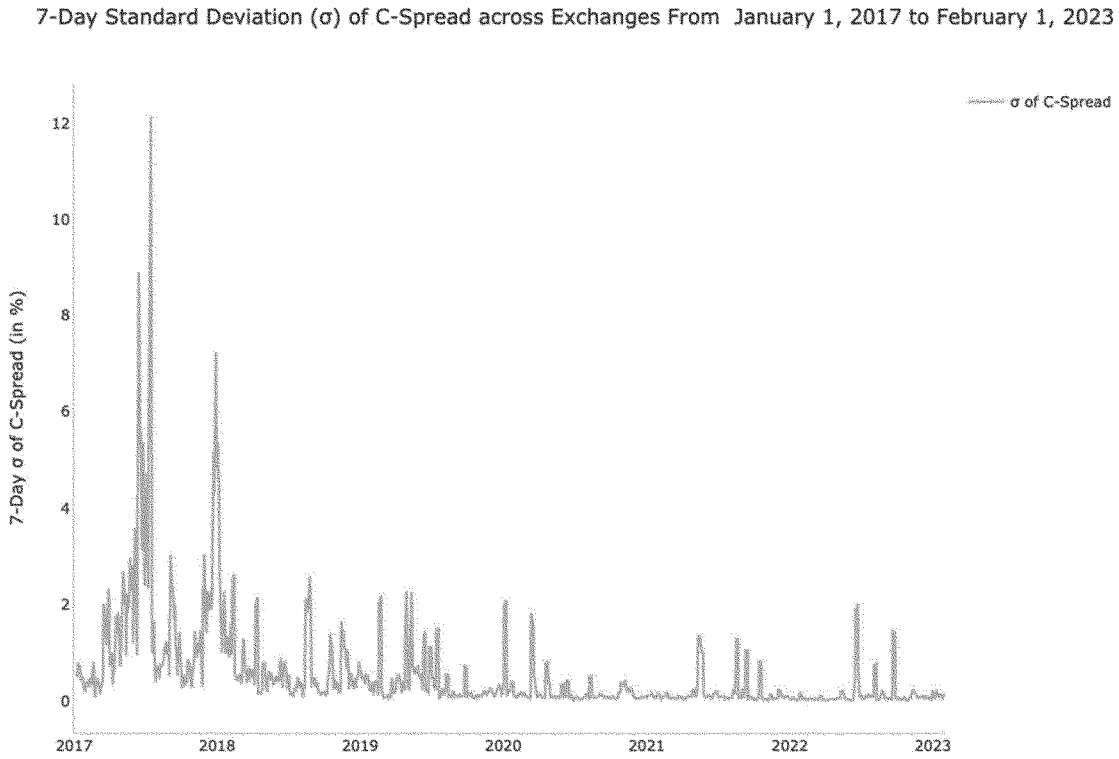


In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, 2021, 2022 and 2023 are 29.14%, 14.12%, 8.54%, 6.04%, 3.65%, 5.56% and 0.63%%, respectively. The market has experienced a 22.68% year-on-year decline in the annual median %C-Spread indicating a greater degree of Bitcoin price convergence across exchanges and a more efficient market.

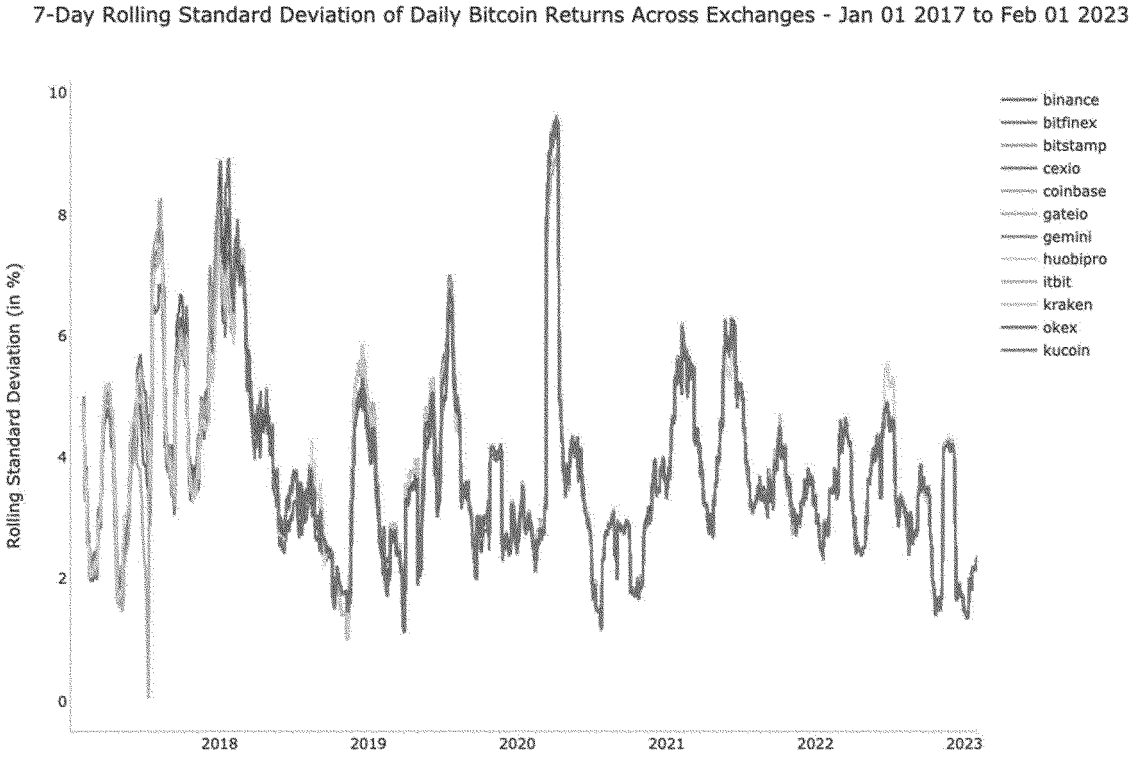


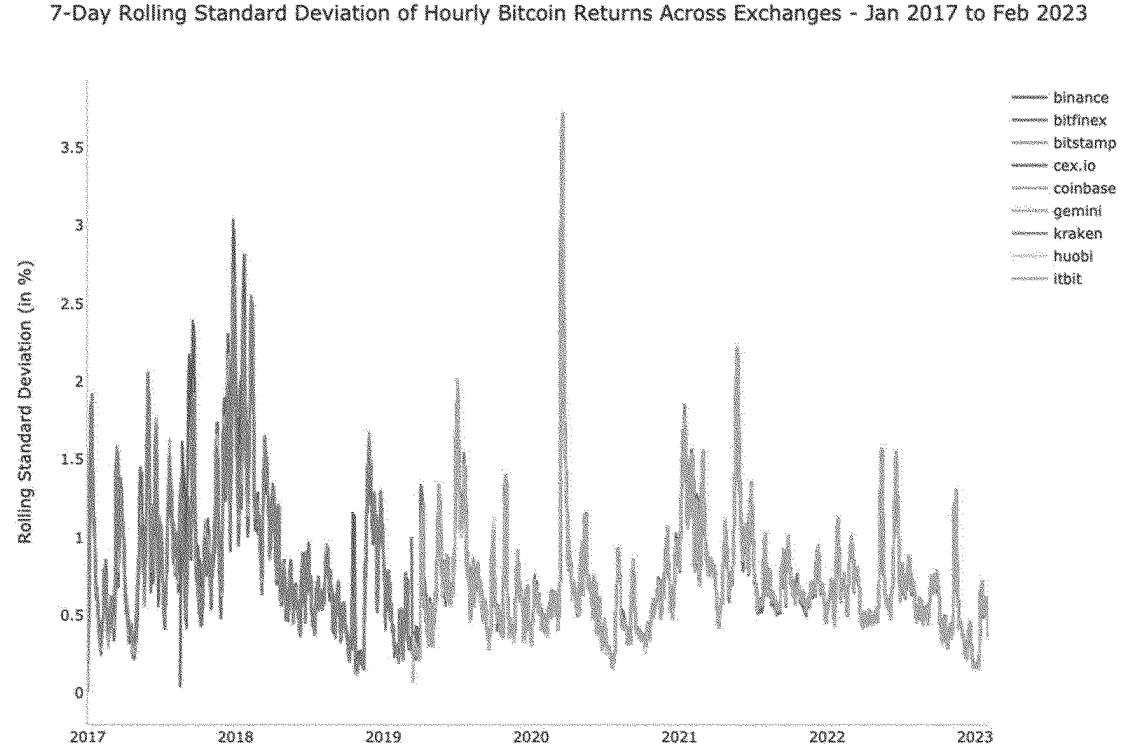
The dispersion (σ) of Bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to February 1, 2023. The Sponsor's research finds that the dispersion in Bitcoin prices across all exchanges has decreased over time, indicating that prices on all the considered exchanges converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for Bitcoin.

As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.

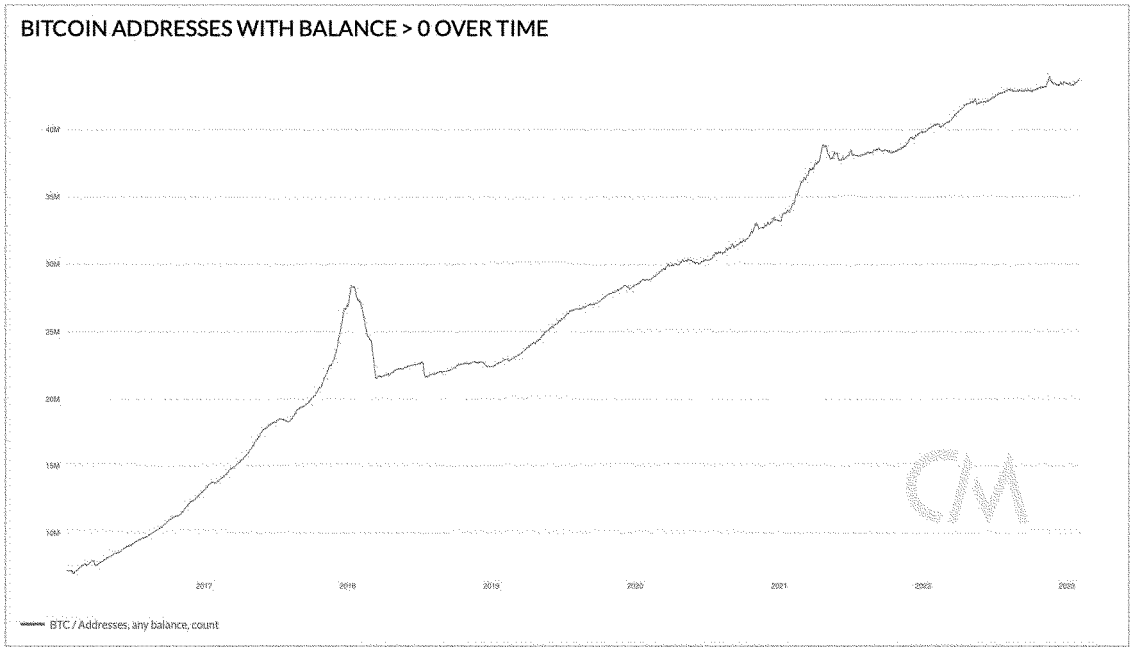


It is very important to note that the cross-exchange spreads, and therefore the process of price discovery in the Bitcoin market has improved significantly over time despite the market experiencing rather uniform albeit sinusoidal volatility. This can be shown in the graphs below where we can clearly observe a slightly decreasing yet consistent level of volatility in the Bitcoin market based on daily and hourly returns across the considered exchanges. Again, this further supports the argument that the Bitcoin market has exhibited significant improvements in terms of price discovery over time, irrespective and despite of the volatility of the asset itself, which can be attributed to efficient arbitrage operations.

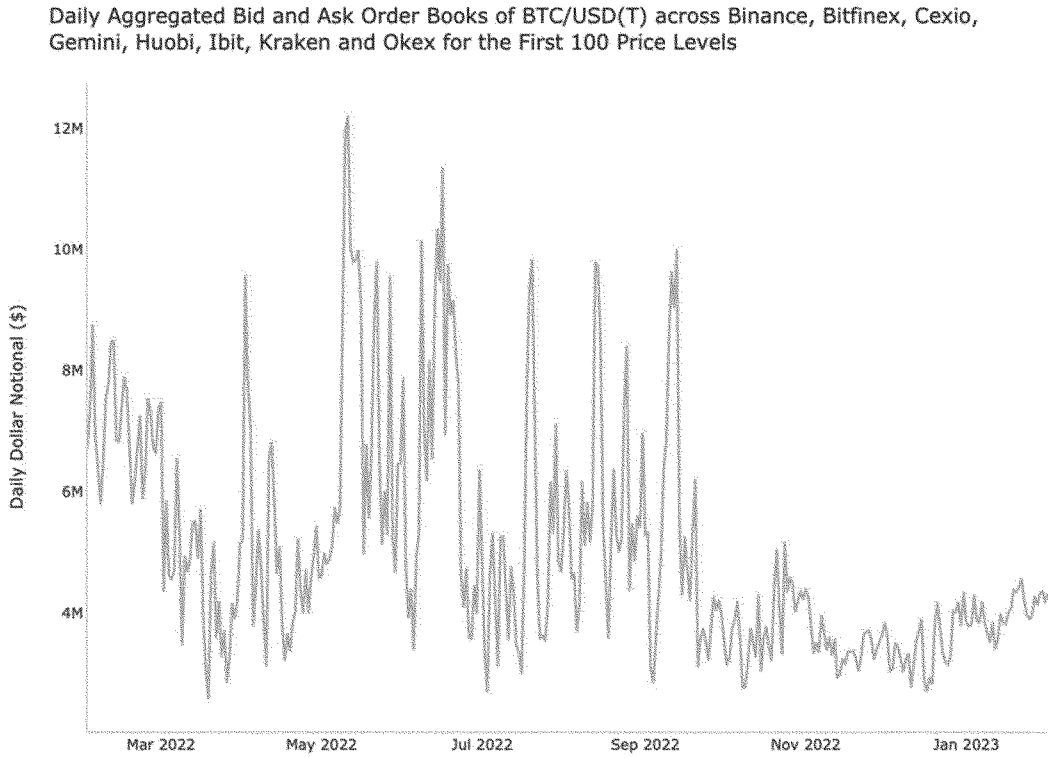




One factor that has contributed to the overall efficiency of, and improved price discovery within the Bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding Bitcoin from January 2016 to February 2023.



The large number of participants in the Bitcoin market has manifested itself in high liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto exchanges from February 2022 to January 2023. Specifically, the dollar notional that is allocated closest to the mid price has hovered between $2.6 million and $12 million over that period.



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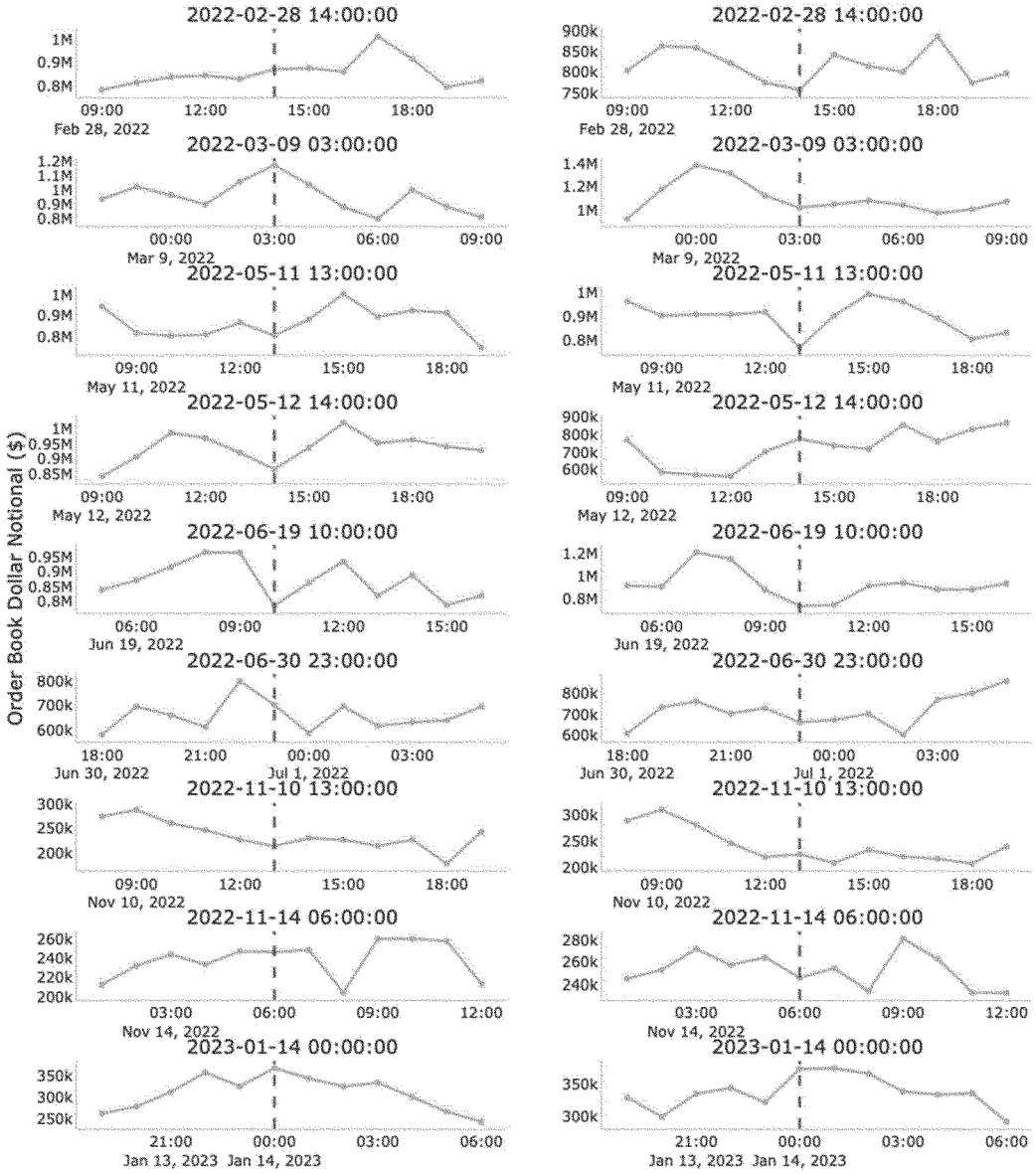
An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of Bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to and post an extreme price event. Specifically, for events constituting large increases in the price of Bitcoin, if the ask (or sell) side of the order book

experiences a significant shrinkage in the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of Bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

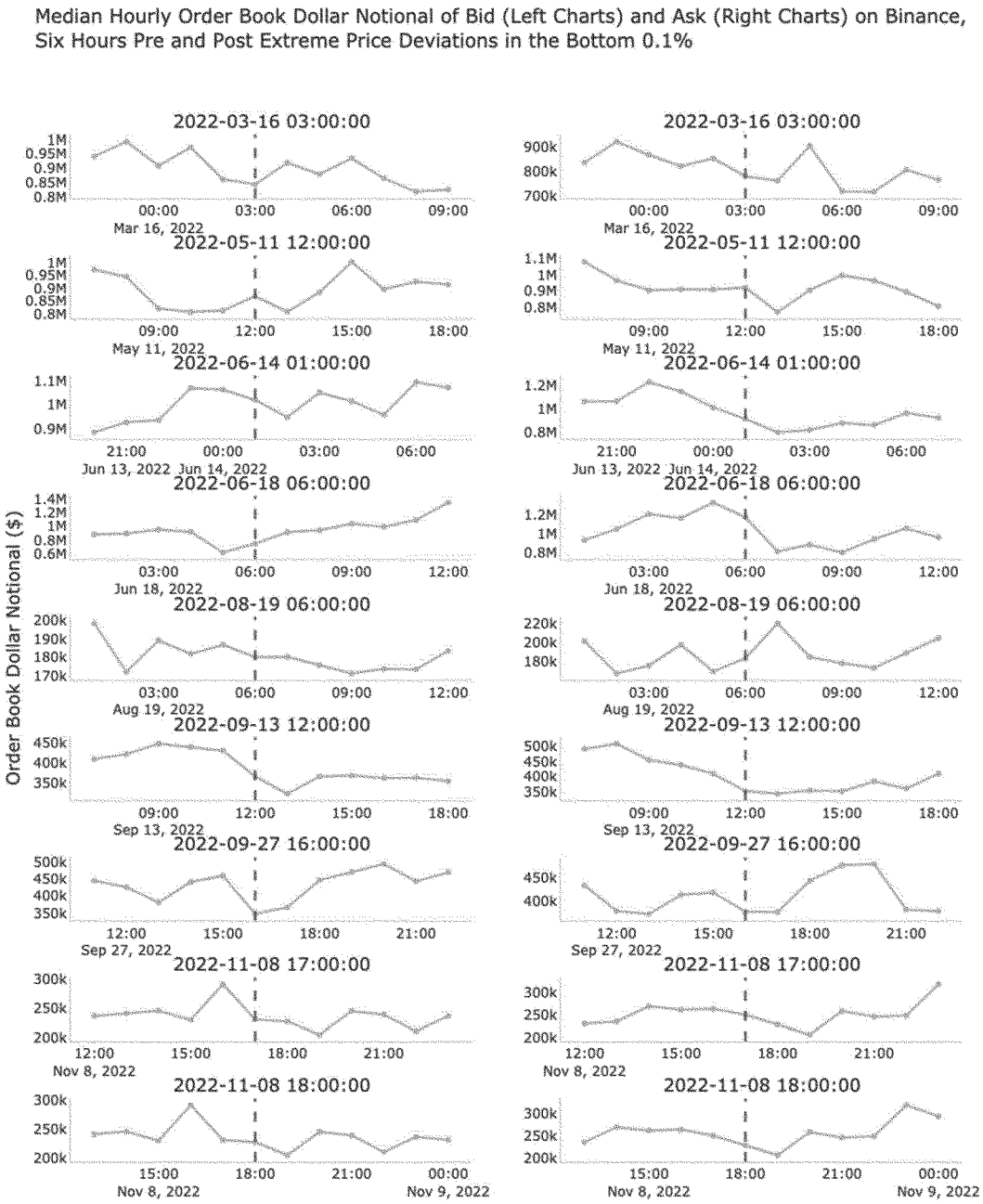
Using the top and bottom 0.1% of hourly price changes from February 2022 to February 2023 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the Bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Top 0.1%



The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an

efficient and dynamic Bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.



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Finally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[86] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not

[86] While the Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Index because there is little financial incentive to do so.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.spglobal.com/spdji/en/indices/digital-assets/sp-bitcoin-index/*.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2023–028 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–CboeBZX–2023–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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–CboeBZX–2023–028 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[87]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10244 Filed 5–12–23; 8:45 am]

BILLING CODE 8011–01–P

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 17, 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 propose a new rule under the Securities Exchange Act of 1934 regarding the contents of a covered clearing agency's recovery and wind-down plan and whether to amend Rule 17Ad–22(e)(6) under the Securities Exchange Act of 1934 regarding the margin requirements applicable to a covered clearing agency providing central counterparty services.

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: May 10, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–10318 Filed 5–11–23; 11:15 am]

BILLING CODE 8011–01–P

[87] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97462; File No. SR–MEMX–2023–08]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

May 9, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2023, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members[3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on May 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

(i) modify the Liquidity Provision Tiers; and (ii) modify the required criteria under the Displayed Liquidity Incentive (''DLI'') Tiers.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading.[4] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 3% of the overall market share.[5] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a base rebate of $0.0018 per share for executions of Added Displayed Volume.[6] The Exchange also currently offers Liquidity Provision Tiers 1–5 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by modifying the required criteria under such tiers, as further described below.

With respect to Liquidity Provision Tier 2, the Exchange currently provides an enhanced rebate of $0.00325 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV[7] that is equal to or greater than 0.25% of the TCV;[8] and (2) a Non-Displayed ADAV[9] that is equal to or greater than 4,000,000 shares.[10] The Exchange now proposes to modify the required criteria such that a Member would now qualify for such tier by achieving: (1) an ADAV (excluding Retail Orders[11]) that is equal to or greater than 0.25% of the TCV; and (2) a Non-Displayed ADAV that is equal to or greater than 4,000,000 shares. The Exchange is not proposing to change the rebate for executions under such tier but rather is proposing to exclude Retail Orders from the ADAV component of the first criteria.

With respect to Liquidity Provision Tier 4, the Exchange currently provides an enhanced rebate of $0.0029 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.15% of the TCV. The Exchange now proposes to modify the required criteria such that a Member would now qualify for such tier by achieving an ADAV that is equal to or greater than 0.15% of the TCV, or (2) a Displayed ADAV that is greater than or equal to 2,000,000 shares and a Step-Up Displayed ADAV[12] from April 2023 that is greater than or equal to 50% of the Member's April 2023 Displayed ADAV.[13] Thus, such proposed change would keep the existing criteria intact and add an alternative criteria that includes a Displayed ADAV and a Step-Up Displayed ADAV threshold, which are designed to encourage the submission of additional liquidity-adding order flow to the Exchange. Additionally, the Exchange is proposing that criteria (2) of Liquidity Provision Tier 4 will expire no later than October 31, 2023, and the Exchange will indicate this in a note under the Liquidity Provision Tiers pricing table on the Fee Schedule. The Exchange is not proposing to change the rebate provided under such tier.

With respect to Liquidity Provision Tier 5, the Exchange currently provides an enhanced rebate of $0.0027 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an ADAV that is equal to or greater than 0.075% of the TCV; or (2) a Displayed ADAV (excluding Retail Orders) that is equal to or greater than 750,000 shares and a Step-Up Displayed ADAV (excluding Retail Orders) from October 2022 that is equal to or greater than 30% of the Member's October 2022 Displayed ADAV (excluding Retail Orders).[14] The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 5 such that a Member would qualify for such tier only by achieving an ADAV that is equal to or greater than 0.075% of the TCV. Thus, such proposed change would keep the first of the two existing alternative criteria intact and eliminate the second of the two existing alternative criteria (based on a Displayed ADAV threshold and a Step-Up ADAV from October 2022 threshold). The Exchange is not

[4] Market share percentage calculated as of April 28, 2023. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[5] *Id.*

[6] The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume'' with a Fee Code of ''B'', ''D'' or ''J'', as applicable, on execution reports.

[7] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[8] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[9] As set forth on the Fee Schedule, ''Non-Displayed ADAV'' means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

[10] The pricing for Liquidity Provision Tier 2 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 2'' with a Fee Code of ''B2'', ''D2'' or ''J2'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[11] As set forth in Exchange Rule 11.21(a), a ''Retail Order'' means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

[12] As set forth on the Fee Schedule, ''Step-Up Displayed ADAV'' means Displayed ADAV in the relevant baseline month subtracted from current Displayed ADAV.

[13] The pricing for Liquidity Provision Tier 4 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 4'' with a Fee Code of ''B4'', ''D4'' or ''J4'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

[14] The pricing for Liquidity Provision Tier 5 is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume, Liquidity Provision Tier 5'' with a Fee Code of ''B5'', ''D5'' or ''J5'', as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

proposing to change the rebate provided under such tier.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1–5 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

DLI Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (*i.e.,* through the applicable quoting requirement [15]) in a broad base of securities (*i.e.,* through the applicable securities requirements [16]), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders.[17] Now, the Exchange proposes to modify the required criteria under DLI Tier 2.

Currently, a Member qualifies for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of least 400 securities per trading day during the month. Now, the Exchange proposes to increase the securities requirement under DLI Tier 2 such that a Member would now qualify for DLI Tier 2 by achieving an NBBO Time of at least 25% in an average of 500 (*i.e.,* increased from 400) securities per trading day during the month. This proposed increase in the securities requirement under DLI Tier 2 is designed to achieve the DLI's market quality benefits described above in a broader base of securities under such tier. The Exchange is not proposing to change the rebate for executions under such tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [20]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts (such as tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the Liquidity Provision Tiers 2, 4, and 5, and the DLI Tier 2, each as modified by the changes proposed herein, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are reasonably designed to encourage Members to maintain or increase their order flow, including in the various forms of liquidity-adding and liquidity-removing volume under the required criteria, as applicable, to the Exchange, which the

[15] As set forth on the Fee Schedule, the term ''quoting requirement'' means the requirement that a Member's NBBO Time be at least 25%, and the term ''NBBO Time'' means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers (''MPIDs'') has a displayed order of at least one round lot at the national best bid or the national best offer.

[16] As set forth on the Fee Schedule, the term ''securities requirement'' means the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

[17] *See* the Exchange's Fee Schedule (available at *https://info.memxtrading.com/fee-schedule/*) for additional details regarding the Exchange's DLI Tiers. *See also* Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR–MEMX–2021–07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

[20] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

Exchange believes would promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebates for executions of Added Displayed Volume under each such tier is commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above.

With respect to the proposed change to increase the securities requirement under DLI Tier 2 from 400 securities to 500 securities, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory because it will apply to all Members equally, in that all Members will continue to have the opportunity to achieve the required criteria under such tier, and this proposed increase is intended to enhance market quality in a broader range of securities on the Exchange to the benefit of all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [21] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would maintain a tiered pricing structure that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize members to submit additional order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers and the DLI Tiers, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] *See supra* note 20.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[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'. . . .''.[24] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [25] and Rule 19b–4(f)(2) [26] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2023–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2023–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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–MEMX–2023–08 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10246 Filed 5–12–23; 8:45 am]

BILLING CODE 8011–01–P

[23] *See supra* note 20.

[24] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97465; File No. SR–Phlx–2023–16]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3(a)(1)

May 9, 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 May 1, 2023, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Equity 7, Section 3(a)(1) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 3(a)(1) to exclude certain days for purposes of calculating Consolidated Volume and trading activity. Specifically, the Exchange also proposes to amend Equity 7, Section 3(a)(1) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December) (''Triple Witch Dates''); (2) the dates on which the MSCI Equity Indexes are rebalanced (*i.e.,* on a quarterly basis) (''MSCI Rebalance Dates''); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis) (''S&P Rebalance Dates''); and (4) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes (''Nasdaq Reconstitution Date''). Currently, the Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[4] 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 Exchange believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The Exchange believes that the proposal is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month.

The Exchange further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels.

Finally, the Exchange believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 3(a)(1) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

The Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[5]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2023–16 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–PHLX–2023–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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–PHLX–2023–16 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10248 Filed 5–12–23; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97466; File No. SR–NASDAQ–2023–013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

May 9, 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 May 2, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) eliminate various transaction credits at Equity 7, Section 118(a); and (ii) amend Equity 7, Section 118(a) and Section 118(j) to exclude certain days for purposes of calculating Consolidated Volume and trading activity.[3]

Elimination of Credits

The Exchange proposes to eliminate 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

The Exchange proposes to eliminate the following credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- $0.00305 per share executed credit for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.20% or more of Consolidated Volume; (ii) executes 0.40% or more of Consolidated Volume through providing midpoint orders and through M–ELO; and (iii) removes at least 1.45% of Consolidated Volume;
- $0.0030 per share executed for securities in Tapes A, B, and C for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.25% or more of Consolidated Volume, which includes shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent 0.40% or more of Consolidated Volume;
- $0.00305 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.20% of Consolidated Volume, and (ii) with at least 0.25% of Consolidated Volume that sets the NBBO;
- $0.0027 per share executed for securities in Tapes A, B, and C for a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.60% of Consolidated Volume, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.25% of Consolidated Volume;
- $0.0029 per share executed for securities in Tapes A, B, and C for a member with (i) shares of liquidity provided in all securities during the month representing more than 0.15% of Consolidated Volume, through one or more of its Nasdaq Market Center MPIDs, and (ii) Total Volume, as defined in Options 7, Section 2 of The Nasdaq Options Market rules, of 0.90% or more of total industry ADV in the Customer clearing range for Equity and ETF option contracts per day in a month on The Nasdaq Options Market; and
- $0.0027 per share executed for securities in Tapes A, B, and C for a member that, through one or more of its Nasdaq Market Center MPIDs: (i) provides shares of liquidity in all securities that represent equal to or greater than 0.20% of Consolidated Volume; (ii) increases the extent to which it provides liquidity in all securities as a percentage of Consolidated Volume by 35% or more during the month relative to the month of May 2021; and (iii) has a ratio of at least 60% NBBO liquidity provided (as defined in Equity 7, Section 114(g)) to liquidity provided by displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) during the month.

In addition, the Exchange proposes to eliminate the following supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange:

- $0.00005 per share executed for securities in Tape B for a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent at least 1.75% of Consolidated Volume, including shares of liquidity provided with respect to securities that are listed on exchanges other than Nasdaq or NYSE that represent at least 0.60% of Consolidated Volume;
- $0.00005 per share executed for securities in Tape A for a member with (i) shares of liquidity provided in Tape A securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.75% of Consolidated Volume, and (ii) shares of liquidity provided in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent at least 0.60% of Consolidated Volume; and
- $0.000025 per share executed for securities in Tapes A and C for a member with (i) shares of liquidity provided in Tape A securities during the month representing at least 1.40% of Consolidated Volume, and (ii) shares of liquidity provided in Tape C representing at least 1.40% of Consolidated Volume.

Finally, the Exchange proposes to eliminate the following credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange:

- $0.00175 per share executed for securities in Tapes A and B and

[3] The Exchange initially filed the proposed pricing changes on May 1, 2023 (SR–NASDAQ–2023–012). The instant filing replaces SR–NASDAQ–2023–012, which was withdrawn on May 2, 2023.

$0.00125 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.225% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.165% or more of Consolidated Volume through midpoint orders;

- $0.0020 per share executed for securities in Tapes A and B and $0.0015 per share executed for securities in Tape C for other non-displayed orders if the member (i) provides 0.275% or more of Consolidated Volume through non-displayed orders (other than midpoint orders) and (ii) provides 0.175% or more of Consolidated Volume through midpoint orders;
- $0.00125 per share executed for securities in Tapes A and B and $0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.30% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and (ii) increases providing liquidity through non-displayed orders (including midpoint orders) by 10% or more relative to the member's February 2021 ADV provided through non-displayed orders (including midpoint orders);
- $0.00075 per share executed for securities in Tape C for other non-displayed orders if the member, during the month (i) provides 0.90% or more of Consolidated Volume; (ii) increases providing liquidity through non-displayed orders (other than midpoint orders) by 10% or more relative to the member's July 2020 Consolidated Volume provided through non-displayed orders (other than midpoint orders) and; (iii) provides 0.20% or more of Consolidated Volume through non-displayed orders (other than midpoint orders); and
- $0.0001 per share executed for securities in Tapes A, B, and C if the member, during the month (i) provides at least 10 million shares of midpoint liquidity per day during the month; and (ii) increases providing liquidity through midpoint orders by 50% or more relative to the member's July 2022 Consolidated Volume provided through midpoint orders.

The Exchange proposes to eliminate these credits in order to simplify its fee schedule. In its effort to simplify its fee schedule, the Exchange proposes to eliminate credits that are not being heavily utilized and have not been successful in accomplishing their objectives, including the objective to induce members to increase liquidity on the Exchange. The Exchange has limited resources to allocate to incentives and it must, from time to time, reallocate those resources to maximize their net impact on the Exchange, market quality, and participants. Going forward, the Exchange plans to reallocate the resources to other incentives that it hopes will be more impactful.

Furthermore, several of the credits that the Exchange proposes to eliminate reference baseline months for the growth elements of the tiers that are no longer relevant benchmarks. As such, these credits no longer provide growth incentives that are aligned with the Exchange's needs. Again, the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Amendments to Calculation of Consolidated Volume and Trading Activity

The Exchange also proposes to amend Equity 7, Section 118(a) and Section 118(j) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December) (''Triple Witch Dates''); (2) the dates on which the MSCI Equity Indexes are rebalanced (*i.e.,* on a quarterly basis) (''MSCI Rebalance Dates''); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis) (''S&P Rebalance Dates''); and (4) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes (''Nasdaq Reconstitution Date''). Currently, the Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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 Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[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'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 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)).

for competition over regulatory intervention in determining 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.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to eliminate various of the Exchange's transaction credits. As described above, the Exchange seeks to simplify and streamline its schedule of credits by eliminating 14 credits in its fee schedule at Equity 7, Section 118(a), including: (i) six credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; (ii) three supplemental credits currently offered to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange; and (iii) five credits currently offered for non-displayed orders (other than Supplemental orders) that provide liquidity to the Exchange.

The Exchange proposes to eliminate various credits in order to simplify its fee schedule. In doing so, the Exchange proposes to eliminate credits that have not been successful in accomplishing their objectives as well as eliminate several credits that reference baseline months for the growth elements of tiers that are no longer relevant benchmarks. The proposed changes are designed to better align with the Exchange's needs. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Those participants that are dissatisfied with the eliminations from the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more generous incentives or less stringent qualifying criteria.

The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The proposal would diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels. This proposal would help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to eliminate credits at Equity 7, Section 118(a) to simplify its fee schedule, eliminate unsuccessful rebates, preserve its limited resources for optimized effect, and better align the schedule of credits with the Exchange's overall mix of objectives. The Exchange intends for its proposed changes to amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 118(a) and Section 118(j) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that these proposals are not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

Additionally, the Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[8]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2023–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2023–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2023–013 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10249 Filed 5–12–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97460; File No. SR–NYSEARCA–2023–35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

May 9, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 1, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Ratio Threshold Fee. The Exchange proposes to implement the fee change effective May 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to further extend the waiver of the Ratio Threshold Fee that was originally implemented in connection with the Exchange's migration to the Pillar platform.[4] The Exchange proposes to implement the rule change on May 1, 2023.

The Ratio Threshold Fee is based on the number of orders entered as compared to the number of executions received in a calendar month and is intended to deter OTP Holders from submitting an excessive number of orders that are not executed.[5] Because order to execution ratios of 10,000 to 1 or greater have the potential residual effect of exhausting system resources, bandwidth, and capacity, such ratios may create latency and impact other OTP Holders' ability to receive timely executions.[6] In connection with the Exchange's migration to the Pillar platform, the Exchange implemented a waiver of the Ratio Threshold Fee (the ''Waiver'') that took effect beginning in the month in which the Exchange began its migration to the Pillar platform and would remain in effect for the three months following the month during which the Exchange completed its migration to the Pillar platform. As the Exchange completed the migration in July 2022, the Waiver was originally due to expire on October 31, 2022. The Exchange previously filed to extend the Waiver until January 31, 2023 and, subsequently, to extend the Waiver until April 30, 2023.[7]

The Exchange believes that extending the Waiver would allow the Exchange additional time to continue to monitor and to further analyze traffic rates and order to execution ratios, without imposing a financial burden on OTP Holders based on their order to execution ratios. The Exchange thus proposes to modify the Fee Schedule to provide that the Waiver would extend through June 30, 2023.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in March 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed extension of the Waiver is reasonable because it is designed to lessen the impact of the migration on OTP Holders and would allow OTP Holders to continue trading on the Pillar platform without incurring excess Ratio Threshold Fees while the Exchange continues to evaluate and conduct further analysis on traffic rates and order to execution ratios. To the extent the proposed rule change encourages OTP Holders to maintain their trading activity on the Exchange, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to

[4] *See* Securities Exchange Act Release No. 94095 (January 28, 2022), 87 FR 6216 (February 3, 2022) (SR–NYSEArca–2022–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule).

[5] *See* Fee Schedule, RATIO THRESHOLD FEE; *see also* Securities Exchange Act Release No. 60102 (June 11, 2009), 74 FR 29251 (June 19, 2009) (SR–NYSEArca–2009–50).

[6] *See id.*

[7] *See* Securities Exchange Act Release Nos. 96252 (November 7, 2022), 87 FR 68210 (November 14, 2022) (SR–NYSEARCA–2022–74) (extension of Waiver until January 31, 2023); 96878 (February 10, 2023), 88 FR 10156 (February 16, 2023) (SR–NYSEARCA–2023–14) (extension of Waiver until April 30, 2023).

[8] *See* proposed Fee Schedule, RATIO THRESHOLD FEE.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchange's market share in equity-based options decreased from 13.57% for the month of March 2022 to 12.83% for the month of March 2023.

mitigate the impacts of the Pillar migration without affecting its competitiveness.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The proposed extension of the Waiver is an equitable allocation of fees and credits because the Waiver would continue to apply to all OTP Holders. All OTP Holders would have the opportunity to continue trading on the Pillar platform without incurring Ratio Threshold Fees, while the Exchange continues to evaluate post-migration traffic rates and order to execution ratios. Thus, the Exchange believes the proposed rule change would continue to mitigate the impact of the migration process for all market participants on the Exchange, thereby sustaining market-wide quality.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed extension of the Waiver is not unfairly discriminatory because it would apply to all OTP Holders on an equal and non-discriminatory basis. The Waiver, as proposed, would permit all OTP Holders to continue trading on the Pillar platform, without incurring additional fees based on their monthly order to execution ratios, while the Exchange continues to evaluate post-migration traffic rates and order to execution ratios. The Exchange thus believes that the proposed change would support continued trading opportunities for all market participants, thereby promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system and, in general, protecting investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition. The Exchange does not believe the proposed extension of the Waiver would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders would continue to be eligible for the Waiver for an additional two months while the Exchange continues to assess traffic rates and order to execution ratios following the migration to Pillar.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in March 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[16]

The Exchange does not believe the proposed extension of the Waiver would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders would continue to be eligible for the Waiver for an additional two months while the Exchange continues to assess traffic rates and order to execution ratios following the migration to Pillar.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [17] of the Act and subparagraph (f)(2) of Rule 19b–4 [18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–35. This file number should be included on the subject line if email is used. To help the Commission process and review your

[14] *See* Reg NMS Adopting Release, *supra* note 11, at 37499.

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[16] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options decreased from 13.57% for the month of March 2022 to 12.83% for the month of March 2023.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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–NYSEARCA–2023–35, and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10243 Filed 5–12–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, May 18, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b)

Dated: May 11, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–10386 Filed 5–11–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97464; File No. SR–BX–2023–010]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

May 9, 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 May 1, 2023, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Equity 7, Section 118(a) to exclude certain days for purposes of calculating Consolidated Volume and trading activity, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Equity 7, Section 118(a) to exclude certain days for purposes of calculating Consolidated Volume and trading activity. Specifically, the Exchange also proposes to amend Equity 7, Section 118(a) to exclude the following from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives: (1) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December) (''Triple Witch Dates''); (2) the dates on which the MSCI Equity Indexes are rebalanced (*i.e.,* on a quarterly basis) (''MSCI Rebalance Dates''); (3) the dates on which the S&P 400, S&P 500, and S&P 600 Indexes are rebalanced (*i.e.,* on a quarterly basis) (''S&P Rebalance Dates''); and (4) and the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes (''Nasdaq Reconstitution Date'').

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Currently, the Exchange excludes the date of the annual reconstitution of the Russell Investments Indexes from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives.

For the same reasons that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from these calculations, the Exchange believes it is appropriate to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from these calculations in the same manner, as trading volumes on such days are generally far in excess of volumes on other days during the month, and market participants that are not otherwise active on the Exchange to a great extent often participate on the Exchange on such dates to rebalance holdings, or in the case of Triple Witch Dates, to close out or roll over positions prior to expiration. The Exchange believes this change to normal activity may affect a member's ability to meet the applicable volume thresholds under its volume-based tiers. The Exchange notes that the proposed exclusion of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from the relevant calculations would be applied in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[4] 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 Exchange believes it is reasonable, equitable, and not unfairly discriminatory to exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date from calculations of total Consolidated Volume and the member's trading activity for purposes of volume calculations for equity pricing tiers/incentives. As described above, Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date typically have extraordinarily high and/or abnormally distributed trading volumes which, in turn, may affect a member's ability to meet the applicable volume thresholds under its transaction pricing tiers/incentives, and the Exchange believes that excluding such days from the relevant calculations for purposes of determining a member's qualification for such tiers/incentives would help to avoid penalizing members that might otherwise have met the requirements to qualify for such tiers/incentives. The Exchange believes that the proposal is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month.

The Exchange further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date will be excluded from determinations of a member's percentage of Consolidated Volume, the Exchange believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active on the Exchange at a significant level throughout the month, excluding the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, the Exchange believes that the change will benefit members that are in a position to achieve volume levels required by the Exchange's pricing schedule but without harming the ability of any members to reach such levels.

Finally, the Exchange believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date, and therefore will not impact the ability of such members to compete. The proposed rule change would apply to all members uniformly, in that each member's volume activities for purposes of pricing tiers/incentives would continue to be calculated in a uniform manner and would now exclude Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to amend the calculation of Consolidated Volume and trading activity at Equity 7, Section 118(a) to avoid penalizing members that might otherwise have met the applicable volume thresholds to qualify for the Exchange's transaction pricing tiers/incentives if not for the abnormal trading volumes and market conditions typically experienced in the equities markets on the Triple Witch Dates, MSCI Rebalance Dates, S&P Rebalance Dates, and the Nasdaq Reconstitution Date. The proposed exclusion of such dates from the relevant calculations would apply to all members uniformly and in the same manner that the Exchange currently excludes the date of the annual reconstitution of the Russell Investments Indexes from such calculations.

The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, 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. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4) and (5).

with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

The Exchange believes the proposal to exclude certain dates from calculating Consolidated Volume and trading activity is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers/incentives.

If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act [5] and paragraph (f) of Rule 19b–4 [6] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2023–010 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–BX–2023–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the 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–BX–2023–010 and should be submitted on or before June 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10247 Filed 5–12–23; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17889 and #17890; TEXAS Disaster Number TX–00652]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4705–DR), dated 04/21/2023.

Incident: Severe Winter Storm.

Incident Period: 01/30/2023 through 02/02/2023.

DATES: Issued on 05/08/2023.

Physical Loan Application Deadline Date: 06/20/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/22/2024.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Texas, dated 04/21/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Anderson, Falls, Gillespie, Hopkins, Kerr, Kimble, Limestone, Red River.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–10308 Filed 5–12–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17913 and #17914; KENTUCKY Disaster Number KY–00100]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of KENTUCKY (FEMA–4711–DR), dated 05/09/2023.

Incident: Severe Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/15/2023 through 02/20/2023.

DATES: Issued on 05/09/2023.

Physical Loan Application Deadline Date: 07/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2024.

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 05/09/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Bell, Breathitt, Caldwell, Carter, Clay, Elliott, Floyd, Harlan, Hart, Johnson, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Morgan, Owsley, Perry, Powell, Whitley, Wolfe.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17913 B and for economic injury is 17914 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–10306 Filed 5–12–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17891 and #17892; OKLAHOMA Disaster Number OK–00168]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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 05/08/2023.

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: The notice of the President's major disaster declaration for the State of Oklahoma, dated 04/24/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Cleveland.

Contiguous Counties (Economic Injury Loans Only): All contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–10309 Filed 5–12–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17911 and #17912; ALABAMA Disaster Number AL–00132]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–4710–DR), dated 05/05/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 03/24/2023 through 03/27/2023.

DATES: Issued on 05/05/2023.

Physical Loan Application Deadline Date: 07/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/05/2024.

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 05/05/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Chambers, Colbert, Coosa, Elmore, Lauderdale, Macon, Marion, Morgan, Randolph, Tallapoosa.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17911 C and for economic injury is 17912 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–10303 Filed 5–12–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0124; FMCSA–2014–0103; FMCSA–2014–0106; FMCSA–2014–0385; FMCSA–2015–0329; FMCSA–2016–0002; FMCSA–2017–0058; FMCSA–2018–0137; FMCSA–2020–0027]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 21, 2023. The exemptions expire on April 21, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2013–0124, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0385, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2018–0137, or FMCSA–2020–0027) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On March 30, 2023, FMCSA published a notice announcing its decision to renew exemptions for 12 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 19187). The public comment period ended on May 1, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 12 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

As of April 21, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (88 FR 19188):

Maurice Abenchuchan (FL)
Ivan Batista (NJ)
Prince Bempong (MA)
Richard Boggs (OH)
Keith Byrd (TN)
Perry Cobb (TN)
Nathaniel Godfrey (KY)
Reynaldo Martinez (TX)
Floyd McClain (OH)
David Sanders (IL)
John Turner (CO)
Anthony Witcher (MI)

The drivers were included in docket numbers FMCSA–2013–0124, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0385, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2018–0137, or FMCSA–2020–0027. Their exemptions were applicable as of April 21, 2023 and will expire on April 21, 2025. In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and

objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–10270 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0018]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on April 26, 2023. The exemptions expire on April 26, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2023–0018) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On March 22, 2023, FMCSA published a notice announcing receipt of applications from 10 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (88 FR 17286). The public comment period ended on April 21, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach

or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Amin Ali (OH)
Guled Ali (OH)
Joey Dickinson (TN)
Samantha Gatpo (CA)
Freddy Lopez Hernandez (TX)
Shane Rowland (TX)
Timothy Smith (VA)
Daniel Vollertsen (NY)
Martin Vorpahl (WI)
Irven Wade (NV)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–10300 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0136; FMCSA–2021–0013]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for eight individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on May 14, 2023. The exemptions expire on May 14, 2025. Comments must be received on or before June 14, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2018–0136 or Docket No. FMCSA–2021–0013 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2018–0136 or FMCSA–2021–0013) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0136 or Docket No. FMCSA–2021–0013), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2018–0136 or FMCSA–2021–0013) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2018–0136 or FMCSA–2021–0013) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/*

individuals/privacy/privacy-act-system-records-notices, the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The eight individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the eight applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The eight drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of May 14, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Timothy Allen (LA)
Frederick Fleetwood (NC)
Christopher Gilmore (TX)
Jeffrey Haley (MN)
Kelvin Jarman (IL)
Elizabeth Keyes (MN)
Raymond Levine (CA)
Ted McCracken (OR)

The drivers were included in docket numbers FMCSA–2018–0136 or FMCSA–2021–0013. Their exemptions are applicable as of May 14, 2023 and will expire on May 14, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–10299 Filed 5–12–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Reinstatement of Information Collection Request Submitted for Public Comment; Comment Request for the Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the information collection, *Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey (2023).*

DATES: Written comments should be received on or before July 14, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224 or by email to *pra.comments@irs.gov.*

Please reference the information collection's ''OMB number 1545–2288 or title Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey (2023)'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–5744, or through the internet, at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey.

OMB Number: 1545–2288.

Document Number(s): None.

Abstract: The Internal Revenue Service (IRS) conducts the Comprehensive Taxpayer Attitude Survey as part of the Service-wide effort to maintain a system of balanced organizational performance measures mandated by the IRS Restructuring and Reform Act (RRA) of 1998. This is also a result of Executive Order 12862 that requires all Government agencies to survey their customers. The IRS' office of Research Applied Analytics & Statistics (RAAS) is sponsoring this annual survey (formerly conducted by the IRS Oversight Board) with the objective of better understanding what influences taxpayers' tax compliance, their opinions of the IRS, and their customer service preferences, as well as how these taxpayer views change over time.

Current Actions: To request a reinstatement of OMB approval.

Type of Review: Reinstatement of a previously approved information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 32,450.

Estimated Number of Responses: 1,298.

Estimated Time per Response/ Respondent: 1.5 min.(screened), 3 min. (participants).

Estimated Total Annual Burden Hours: 1,308.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 09, 2023.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2023–10218 Filed 5–12–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet via videoconference on Thursday, June 1, 2023, from 1:30 p.m.–3:30 p.m. Eastern Time. The meeting is open to the public. The FACI provides non-binding recommendation and advice to the Federal Insurance Office (FIO) in the U.S. Department of Treasury.

DATES: The meeting will be held via videoconference on Thursday, June 1, 2023, from 1:30 p.m.–3:30 p.m. Eastern Time.

ADDRESSES: The meeting will be held via videoconference and is open to the public. The public can attend remotely via live webcast: *www.yorkcast.com/treasury/events/2023/06/01/faci.* The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* Please refer to the FACI website for up-to-date information on this meeting. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0341, or *snider.page@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: John Gudgel, Senior Insurance Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–1748 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to *faci@treasury.gov.* The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other supporting materials, are part of the public record and subject to public

disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the second FACI meeting of 2023. In this meeting, the FACI will continue to discuss topics related to climate-related financial risk and the insurance sector, and will also discuss cyber insurance developments and international insurance issues. The FACI will also receive status updates from each of its subcommittees and from FIO on their activities, as well as consider any new business.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2023–10286 Filed 5–12–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0252]

Agency Information Collection Activity: Application for Authority To Close Loans on an Automatic Basis Nonsupervised Lenders; Request for Agent Recognition

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0252.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0252'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Authority to Close Loans on an Automatic Basis Nonsupervised Lenders (VA Form 26–8736) & Request for Agent Recognition (VA Form 26–8736c).

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8736 is used by non-supervised lenders requesting approval to close loans on an automatic basis. The form contains information and data considered crucial for making acceptability determinations as to lenders who shall be approved for this privilege. VA-Form 26–8736c is used for yearly recertifications and Agent applications.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 14668 on March 09, 2023, pages 14668 and 14669.

Affected Public: Individuals or Households.

Estimated Annual Burden: 440.1 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,820.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–10344 Filed 5–12–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0877]

Agency Information Collection Activity: Freedom of Information Act (FOIA) or Privacy Act (PA) Request, Priority Processing Request, and Document/Evidence Submission

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a previously approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 14, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0877'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0877'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Freedom of Information Act (FOIA) or Privacy Act (PA) Request (VA Form 20–10206), Priority Processing Request (VA Form 20–10207) and

Document/Evidence Submission (VA Form 20–10208).

OMB Control Number: 2900–0877.

Type of Review: Revision.

Abstract: VA Form 20–10206 is used by a claimant to request access to Federal agency records as long as the record is not exempt from release by one of nine FOIA exemptions. VA Form 20–10207 is used by claimants to notify VA of an urgent or immediate need due to change in status or circumstance for priority processing of claim. VA Form 20–10208 is used to identify and associate additional evidence or information in support of claim.

Affected Public: Individuals and households.

Estimated Annual Burden: 13,230 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 132,301.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–10345 Filed 5–12–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Monday,
No. 93 May 15, 2023

Part II

Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Portable Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2020–BT–TP–0029]

RIN 1904–AF03

Energy Conservation Program: Test Procedure for Portable Air Conditioners

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') amends the current test procedure for portable air conditioners (''portable ACs'') to incorporate a measure of variable-speed portable AC performance, generally consistent with previously granted waivers, and to make minor clarifying edits. DOE also establishes a new test procedure for portable ACs that provides more representative measures of cooling capacity and energy consumption. The new test procedure will provide the basis for development of any updated efficiency standards for portable ACs. Should DOE establish such standards, the amended test procedure would become the required test method for determining compliance.

DATES: The effective date of this rule is June 14, 2023. The amendments to Appendix CC will be mandatory for product testing starting November 13, 2023. Manufacturers will be required to use the Appendix CC until the compliance date of any final rule establishing amended energy conservation standards for portable ACs based on the newly established test procedure at Appendix CC1. At such time, manufacturers will be required to begin using Appendix CC1.

The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of June 14, 2023. The incorporation by reference of certain other material listed in this rule was approved by the Director of the Federal Register on August 1, 2016.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-TP-0029*. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 287–5904. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE maintains material previously approved for incorporation by reference in appendix CC to 10 CFR part 430, subpart B and incorporates by reference the following industry standards into parts 429 and 430:

AHAM PAC–1–2022, ''Energy Measurement Test Procedure for Portable Air Conditioners'', copyright 2022 (''AHAM PAC–1–2022'').

Copies of AHAM PAC–1–2022 can be obtained from the Association of Home Appliance Manufacturers (''AHAM''), 1111 19th Street NW, Suite 402, Washington, DC 20036; or by going to AHAM's online store at *www.aham.org/AHAM/AuxStore*.

ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'', copyright 2009 (''ASHRAE 37–2009'').

ANSI/ASHRAE Standard 41.1–1986 (Reaffirmed 2006), ''Standard Method for Temperature Measurement'', copyright 1987 (''ANSI/ASHRAE 41.1'').

ANSI/ASHRAE Standard 41.6–1994 (RA 2006), ''Standard Method for Measurement of Moist Air Properties'', copyright 1994. (''ANSI/ASHRAE 41.6–1994'').

ANSI/AMCA 210–99 (co-published as ANSI–ASHRAE S51–1999), ''Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating'' (copyright 1999) (''ANSI/AMCA 210'').

Copies of ASHRAE 37–2009, ANSI/ASHRAE 41.1, ANSI/ASHRAE 41.6–1994, and ANSI/AMCA 210 can be obtained from the American National Standards Institute (''ANSI''), 1899 L Street NW, 11th Floor, Washington, DC; or by going to ANSI's online store at *webstore.ansi.org/*.

IEC 62301 (Edition 2.0, 2011–01) ''Household electrical appliances—Measurement of standby power'' (copyright 2011) (''IEC 62301 Ed. 2.0'').

Copies of IEC 62301 Ed. 2.0 can be obtained from the International Electrotechnical Commission (''IEC''), 3 Rue de Varembe, Case Postale 131, 1211 Geneva 20, Switzerland; +41 22 919 02 11, *webstore.iec.ch/*.

For a further discussion of these standards see section IV.N of this document.

Table of Contents

I. Authority and Background

The Department of Energy's (''DOE's'') test procedure for portable air conditioners (''portable ACs'') is currently prescribed at 10 CFR 430.23(dd) and appendix CC to subpart B of part 430 (''appendix CC''). The

following sections discuss DOE's authority to establish test procedures for portable ACs and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. In addition to specifying a list of covered products, EPCA enables the Secretary of Energy to classify additional types of consumer products as covered products under EPCA. These products include portable ACs, the subject of this document. (42 U.S.C. 6292(a)(20)) In a final determination of coverage published in the **Federal Register** on April 18, 2016, DOE classified portable ACs as covered products under EPCA. 81 FR 22514.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including portable ACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. (42 U.S.C. 6293(b)(1)(A)(ii))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)(A)) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures for the covered product, if a separate test is technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (''IEC'') Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (*Id.*)

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

As stated, DOE's existing test procedures for portable ACs appear at appendix CC. DOE established the current test procedure for portable ACs on June 1, 2016. 81 FR 35241 (''June 2016 Final Rule''). The June 2016 Final Rule established provisions for measuring the energy consumption of single-duct and dual-duct portable ACs in active, standby, and off modes. The current test procedure includes provisions for determining seasonally adjusted cooling capacity (''SACC'') in British thermal units per hour (''Btu/h''), combined energy efficiency ratio (''CEER'') in British thermal units per watt-hour (''Btu/Wh''), and estimated annual operating cost (''EAOC'') in dollars per year. 10 CFR 430.23(dd). The June 2016 Final Rule also established provisions for certification, compliance, and enforcement for portable ACs in 10 CFR part 429.

On June 2, 2020, DOE published a Decision and Order granting a waiver to LG Electronics USA, Inc. (''LG'') for basic models of single-duct variable-speed portable ACs to account for variable-speed portable AC performance under multiple outdoor temperature operating conditions, thus yielding more representative results. 85 FR 33643 (Case No. 2018–004, ''LG Waiver'').

On November 5, 2020, DOE published in the **Federal Register** an early assessment review request for information (''RFI'') (''November 2020 RFI'') in which it sought data and

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

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

information pertinent to whether amended test procedures would (1) more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or (2) reduce testing burden. 85 FR 70508.

On April 6, 2021, DOE published a notice of interim waiver for GD Midea Air Conditioning Equipment Co. LTD. (''Midea''), which issued a similar alternate test procedure to that from the LG Waiver with additional specifications to accommodate the combined-duct configurations of the specified Midea basic models. 86 FR 17803 (Case No. 2020–006, ''Midea Interim Waiver'').

On April 16, 2021, DOE published in the **Federal Register** an RFI (''April 2021 RFI'') seeking data and information regarding issues pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure (1) produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or (2) reduces testing burden. In the April 2021 RFI, DOE requested comments, information, and data about a number of issues, including (1) updates to industry test standards, (2) test harmonization, (3) energy use measurements, (4) representative average period of use, (5) test burden, (6) heat transfer measurements and calculations, (7) heating mode, fan-only mode, and dehumidification mode, (8) network connectivity, (9) part-load performance and load-based testing, (10) spot coolers, and (11) test procedure waivers. 86 FR 20044.

On June 8, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''June 2022 NOPR'') proposing to amend the test procedures for portable ACs to incorporate a measure of variable-speed portable AC performance and make minor clarifying edits. DOE also proposed to adopt a new test procedure in appendix CC1 to improve representativeness for all configurations of portable ACs by including substantively different measures of cooling capacity and energy consumption compared to the current portable AC test procedure at appendix CC. The provisions in appendix CC1 were largely derived from a draft version of the most recent update to the AHAM standard for portable ACs, AHAM PAC–1, ''Portable Air Conditioners.'' DOE requested comments from interested parties on the proposal. 87 FR 34934.

DOE received comments in response to the June 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JUNE 2022 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
New York State Energy Research and Development Authority	NYSERDA	17	State Agency.
Association of Home Appliance Manufacturers	AHAM	18	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, National Consumer Law Center.	Joint Commenters	19	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison; collectively, the California Investor-Owned Utilities.	California IOUs	20	Utilities.
Keith Rice	Rice	21	Individual.
Northwest Energy Efficiency Alliance and Northwest Power and Conservation Council.	NEEA and NWPCC	22	Efficiency Organizations.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the July 13, 2022, public meeting (hereafter referred to as the ''July 2022 NOPR public meeting''), DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are not substantively addressed by written comments are summarized and cited separately throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE (1) amends 10 CFR 429.4 ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners''; (2) updates 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' to address combined-duct portable ACs; (3) amends appendix CC, ''10 CFR Appendix CC to Subpart B of Part 430 Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners''; and (4) adopts a new appendix CC1, ''10 CFR Appendix CC1 to Subpart B of Part 430 Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners,'' as summarized in Tables II.1 through II.4 below, respectively.

Specifically, in this final rule, DOE amends 10 CFR 429.4 ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners'' as follows:

(1) Incorporates by reference AHAM PAC–1–2022, ''Portable Air Conditioners'' (''AHAM PAC–1–2022''), which includes an industry-accepted method for testing variable-speed portable ACs, in 10 CFR 429.4; and

(2) Adds rounding instructions for the SACC and the new energy efficiency metric, annualized energy efficiency ratio (''AEER''), in 10 CFR 429.62;

DOE's adopted amendments in 10 CFR 429.4 and 429.62 are summarized in Table II.1 compared to the previous 10 CFR 429.4 and 429.62, as well as the reason for the changes.

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for portable ACs. (Docket No. EERE–2020–BT–TP–0029, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES IN AMENDED 10 CFR 429.4 AND 429.62 RELATIVE TO PREVIOUS 10 CFR 429.4 AND 429.62

Previous 10 CFR 429.4 and 429.62	Amended 10 CFR 429.4 and 429.62	Attribution
10 CFR 429.4 incorporated by reference ANSI/AHAM PAC–1–2015.	Adds incorporation by reference in 10 CFR 429.4 of AHAM PAC–1–2022.	Harmonize with updated industry test procedure.
10 CFR 429.62 required rounding based on AHAM PAC–1–2015.	Adds to 10 CFR 429.62 rounding instructions for SACC and AEER when using appendix CC1.	Improve reproducibility of the test procedure.

In this final rule, DOE also updates 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' as follows:

(1) Adds a definition for the term ''combined-duct portable air conditioner'' to 10 CFR 430.2; and

(2) Adds requirements to determine estimated annual operating cost for single-duct and dual-duct variable-speed portable ACs in 10 CFR 430.23.

DOE's actions in 10 CFR 430.2 and 430.23 are summarized in Table II.1 compared to the previous 10 CFR 430.2 and 430.23, as well as the reason for the changes.

TABLE II.2—SUMMARY OF CHANGES IN AMENDED 10 CFR 430.2 AND 430.23 RELATIVE TO PREVIOUS 10 CFR 430.2 AND 430.23.

Previous 10 CFR 430.2 and 430.23	Amended 10 CFR 430.2 and 430.23	Attribution
10 CFR 430.2 did not define combined-duct portable AC.	Adds a definition to 10 CFR 430.2 for combined-duct portable AC.	Address test procedure waiver.
10 CFR 430.23 did not have a method to estimate annual operating cost for single-duct and dual-duct variable-speed portable ACs.	Adds a method to 10 CFR 430.23 to estimate annual operating cost for single-duct and dual-duct variable-speed portable ACs.	Address test procedure waiver.

In this final rule, DOE also amends appendix CC, ''10 CFR Appendix CC to Subpart B of Part 430 Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners'' as follows:

(1) Adds definitions in section 2 for ''combined-duct,'' ''single-speed,'' ''variable-speed,'' ''full compressor speed (full),'' ''low compressor speed (low),'' ''theoretical comparable single-speed,'' and ''seasonally adjusted cooling capacity, full;''

(2) Divides section 4.1 into two sections, 4.1.1 and 4.1.2, for single-speed and variable-speed portable ACs, respectively, and details configuration-specific cooling mode testing requirements for variable-speed portable ACs;

(3) Adds a requirement in section 4.1.2 that, for variable-speed portable ACs, the full compressor speed at the 95-degrees Fahrenheit (''°F'') test condition be achieved with user controls, and the low compressor speed at the 83 °F test condition be achieved with manufacturer-provided settings or controls;

(4) Adds cycling factors (''CFs'') in section 5.5.1 (0.82 for single-duct units and 0.77 for dual-duct units);

(5) Adds a requirement to calculate SACC with full compressor speed at the 95 °F test condition and low compressor speed at the 83 °F test condition in sections 5.1 and 5.2, consistent with the LG waiver and Midea Interim Waiver, with an additional requirement for variable-speed portable ACs to represent SACC with full compressor speed for both test conditions (''$SACC_{Full}$''), and;

(6) Adds a requirement in section 3.1.2 that, if a portable AC has network functions, all network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instructions for disabling network settings, test the unit with the network settings in the factory default configuration for the duration of the test.

DOE's actions in appendix CC are summarized in Table II.3 compared to the current appendix CC, as well as the reason for the changes.

TABLE II.3—SUMMARY OF CHANGES IN AMENDED APPENDIX CC TO PREVIOUS APPENDIX CC

Previous appendix CC	Amended appendix CC	Attribution
Did not specify compressor type or include variable-speed portable ACs.	Adds definitions for single-speed and variable-speed pertaining to portable ACs and additional compressor speed definitions.	Address test procedure waiver.
Specified cooling mode requirements and subsequent calculations for single-speed portable ACs.	Adds cooling mode requirements and subsequent calculations for variable-speed portable ACs.	Address test procedure waiver.
Did not specify requirements to achieve compressor speeds.	Adds a requirement that the full compressor speed at the 95 °F test condition be achieved with user controls and the low compressor speed at the 83 °F test condition be achieved with manufacturer settings.	Address test procedure waiver.
Did not include a CF	Adds CFs of 0.82 for single-duct units and 0.77 for dual-duct units to determine theoretical single-speed portable AC cooling capacities.	Address test procedure waiver.

TABLE II.3—SUMMARY OF CHANGES IN AMENDED APPENDIX CC TO PREVIOUS APPENDIX CC—Continued

Previous appendix CC	Amended appendix CC	Attribution
Calculated SACC for single-speed portable ACs	Adds equations to calculate SACC for variable-speed portable ACs. Requires that the full compressor speed be used to determine capacity at the 95 °F test and the low compressor speed be used to determine capacity at the 83 °F test condition. Requires additional representation of new metric, $SACC_{Full}$, using the full compressor speed at the 83 °F test condition.	Address test procedure waiver and ensure comparability between single-speed and variable-speed capacity ratings.
Did not address portable ACs with network functions.	Adds a requirement that, if a portable AC has network functions, all network functions must be disabled throughout testing.	Ensure reproducibility of the test procedure.

In this final rule, DOE additionally adopts a new appendix CC1, ''10 CFR Appendix CC1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners,'' which, compared to appendix CC as amended in this final rule:

(1) Incorporates by reference parts of the updated version of the AHAM standard, AHAM PAC–1–2022, which includes an industry-accepted method for testing portable ACs;

(2) Adopts a new efficiency metric, AEER, to calculate more representatively the efficiency of both variable-speed and single-speed portable ACs;

(3) Amends the annual operating hours;

(4) Updates the SACC equation for both single-speed and variable-speed portable ACs; and

(5) Adds cycling factors (''CFs'') in section 5.5.1 (0.82 for single-duct units and 0.77 for dual-duct units).

Key aspects of DOE's new appendix CC1 are described in Table II.4 compared to the previous appendix CC, as well as the reason for the new appendix CC1.

TABLE II.4—SUMMARY OF PROPOSED NEW APPENDIX CC1 TO CURRENT APPENDIX CC

Previous appendix CC	New appendix CC1	Attribution
Incorporates by reference ANSI/AHAM PAC–1–2015.	Incorporates by reference AHAM PAC–1–2022	Harmonize with updated industry test procedure.
Specifies cooling mode requirements and subsequent calculations for single-speed portable ACs.	Adds cooling mode requirements, operating hours, and a new efficiency metric.	Improve representativeness of the test procedure.
Calculates SACC for single-speed portable ACs	Adds equation to calculate SACC for variable-speed portable ACs and updates the SACC for single-speed portable ACs.	Improve representativeness of the test procedure.
Calculates CEER for single-speed portable ACs	Replaces CEER equation with AEER equation to calculate efficiency for single-speed and variable-speed portable ACs.	Improve representativeness of the test procedure.
Does not include a CF	Adds CFs of 0.82 for single-duct units and 0.77 for dual-duct units to determine theoretical single-speed portable AC cooling capacities.	Improve representativeness of the test procedure.

DOE has determined that the amendments adopted in this final rule for appendix CC will not require DOE to amend the energy conservation standards for portable ACs because the amendments will not impact the measured efficiency of covered products that minimally comply (*i.e.,* those with single-speed compressors) with the standards for portable ACs at 10 CFR 430.32(cc). *See* 42 U.S.C. 6293(e). The currently applicable appendix CC does not have separate provisions for variable-speed portable ACs. DOE is adopting a test method for such units that address the ability of variable-speed compressors to adjust their operating speed based on the demand load of the conditioned space. Although the measured efficiency could change for variable-speed portable ACs that are currently subject to waivers, DOE has concluded that this proposal will not require an adjustment to the energy conservation standard for portable ACs to ensure that minimally compliant portable ACs will remain compliant. DOE reached this conclusion because variable-speed portable ACs currently on the market are not representative of minimally compliant units.

In addition, the amendments specified in the newly established appendix CC1 would alter the measured efficiency of portable ACs, as discussed further in each relevant section of this final rule. However, testing in accordance with the new appendix CC1 will not be required until such time as compliance is required with any amended energy conservation standards based on the new appendix CC1. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedure in appendix CC beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

DOE defines a ''portable air conditioner'' as a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that delivers cooled, conditioned air to an enclosed space, and is powered by

single-phase electric current. 10 CFR 430.2. The definition also states that a portable AC includes a source of refrigeration and may include additional means for air circulation and heating. *Id.*

Appendix CC specifies provisions for testing portable ACs with either single-duct [6] or dual-duct [7] configurations. In the June 2022 NOPR, DOE summarized comments previously received in response to the April 2021 RFI regarding ''spot coolers,'' which are not currently covered by the portable AC test procedure. Although DOE does not currently define the term ''spot cooler,'' the June 2022 NOPR discussed this term as applying to portable AC configurations that do not provide net cooling to a space, but rather move heat from one area to another in a space (*i.e.,* they reject the heated condenser air to the cooled space). Based on their physical and operating characteristics, spot coolers do not meet either of the definitions for a single-duct or dual-duct portable AC. DOE further noted in the June 2022 NOPR that it was not aware of any spot coolers on the market with an adjustable window mounting bracket for the condenser inlet and exhaust ducts, which is required for the portable AC configurations addressed by the current portable AC test procedure. DOE did not propose any amendments to the scope or definitions related to spot coolers. 87 FR 34934, 34940.

In response to the June 2022 NOPR, NEEA and NWPCC requested that DOE continue to monitor spot coolers for potential consideration in future rulemakings. (NEEA and NWPCC, No. 22 at p. 3)

For the reasons discussed in the June 2022 NOPR, in this final rule DOE is not adopting any amendments to the scope or definitions related to spot cooler configurations of portable ACs. In summary, DOE is not changing the scope of products covered by its portable AC test procedure in this final rule.

[6] DOE defines a ''single-duct portable air conditioner'' as a portable AC that draws all of the condenser inlet air from the conditioned space without the means of a duct, and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket. 10 CFR 430.2.

[7] DOE defines a ''dual-duct portable air conditioner'' is a portable AC that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket. 10 CFR 430.2.

B. Test Procedure

1. Overview

Portable ACs are tested in accordance with the currently applicable appendix CC, which incorporates by reference ANSI/AHAM PAC–1–2015 ''Portable Air Conditioners'' (''ANSI/AHAM PAC–1–2015''), ASHRAE 37–2009, and IEC Standard 62301 ''Household electrical appliances—Measurement of standby power'' (Edition 2.0 2011–01) (''IEC Standard 62301''), with modifications. Regarding dual-duct portable ACs, the currently applicable DOE test procedure specifies provisions in addition to ANSI/AHAM PAC–1–2015. Specifically, the DOE test procedure specifies an additional test condition for dual-duct portable ACs (83 °F dry-bulb and 67.5 °F wet-bulb outdoor temperature) and additionally accounts for duct heat transfer, infiltration air heat transfer, and off-cycle mode energy use. (*See* sections 4.1, 4.1.1, 4.1.2, and 4.2 of appendix CC.) Appendix CC also includes instructions regarding tested configurations, duct setup, inlet test conditions, condensate removal, unit placement, duct temperature measurements, and control settings. (*See* sections 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.1.3, 3.1.1.4, 3.1.1.6, and 3.1.2 of appendix CC.)

Under the currently applicable test procedure, a unit's SACC, in Btu/h, is calculated as a weighted average of the adjusted cooling capacity (''ACC'') measured at two representative operating conditions. The ACC is the measured indoor room cooling capacity while operating in cooling mode under the specified test conditions, adjusted based on the measured and calculated duct and infiltration air heat transfer. (*See* sections 4.1, 4.1.1, 4.1.2, 5.1, and 5.2 of appendix CC.) The CEER represents the efficiency of the unit, in Btu/Wh, based on the ACC at the two operating conditions; the annual energy consumption (''AEC'') in cooling mode, off-cycle mode, and inactive or off mode; and the number of cooling mode hours per year; with weighting factors applied for the two operating conditions. (*See* sections 4.2, 4.3, 5.3, and 5.4 of appendix CC.)

2. Definitions

As discussed previously in this document, the Midea Interim Waiver provided specifications to accommodate the ''combined-duct'' configuration of the specified Midea basic models. 86 FR 17803. The term ''combined-duct'' refers to a configuration in which both the condenser inlet and outlet air streams are incorporated into the same structure.

In the Midea Interim Waiver, DOE specified a definition for ''combined-duct portable air conditioner'' as part of the alternate test procedure. 86 FR 17803, 17808. Since this duct configuration was not previously defined, DOE proposed in the June 2022 NOPR to define ''combined-duct'' in 10 CFR 430.2 specifically as ''for a portable air conditioner, the condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.'' 87 FR 34934, 34939–34940. DOE did not receive comments on this proposed definition. For reasons described in the Midea Interim Waiver and the June 2022 NOPR, DOE is adopting this proposed definition in this final rule with a minor modification. The adopted definition will be ''combined-duct portable air conditioner'' and will be substantively the same as the proposed definition.

3. Updates to Industry Standards

a. AHAM PAC–1

DOE participated in AHAM's revision of its portable AC test procedure, recently published in December 2022, entitled AHAM PAC–1–2022, ''Energy Measurement Test Procedure for Portable Air Conditioners'' (hereinafter, ''AHAM PAC–1–2022''). As noted above, the previous version of AHAM PAC–1, ANSI/AHAM PAC–1–2015, is referenced by the currently applicable version of appendix CC. While the revision was under development, AHAM released a draft version of AHAM PAC–1–2022 in January 2022 (''AHAM PAC–1–2022 Draft''), the provisions of which DOE reviewed and considered for adoption in the amended appendix CC and the newly established appendix CC1, as discussed in the June 2022 NOPR. 87 FR 34934, 34941. In the June 2022 NOPR, DOE also stated that if AHAM publishes a final version of PAC–1–2022 Draft prior to DOE publishing a test procedure final rule, DOE intends to update the referenced industry test standard in the DOE test procedure to reference the latest version of AHAM PAC–1. *Id.* In this final rule, DOE evaluated the issued version of the standard, AHAM PAC–1–2022, for incorporation by reference in the portable AC test procedure.

In the June 2022 NOPR, DOE proposed to maintain references to AHAM PAC–1–2015 in appendix CC, with adjustments made to the test procedure to account for variable-speed operation in keeping with the LG Waiver and Midea Interim Waiver. DOE proposed this approach because adopting a test procedure consistent with AHAM PAC–1–2022 would result in an efficiency metric not comparable

with existing portable AC standards established in the energy conservation standards final rule published by DOE on January 10, 2020 (85 FR 1378; ''January 2020 Final Rule''). 87 FR 34934, 34941. DOE also proposed to add a new capacity metric to appendix CC for variable-speed models, $SACC_{Full}$, that is comparable to the SACC for single-speed models. *Id.*

In the June 2022 NOPR, DOE proposed to adopt AHAM PAC–1–2022 in a new appendix CC1, with amendments intended to improve test procedure representativeness, noting that as proposed appendix CC1 would simplify the portable AC test procedure for variable-speed portable ACs and improve representativeness and comparability among different portable AC configurations. *Id.* DOE also proposed to incorporate by reference the AHAM PAC–1–2022 standard in 10 CFR 429.4. 87 FR 34934, 34941.

In response to the June 2022 NOR, AHAM urged DOE to incorporate by reference the final version of AHAM PAC–1–2022 in DOE's final rule by adopting AHAM PAC–1–2022 in full as the Federal test procedure. AHAM stated that AHAM PAC–1–2022 meets EPCA requirements and addresses some of DOE's proposed amendments to the test procedure. (AHAM, No. 18 at p. 2)

DOE has reviewed the final version of AHAM PAC–1–2022 and compared it to the draft version considered for the June 2022 NOPR. The draft and final versions of the standard are largely the same, with one notable change in the approach to calculate CEER that is mostly consistent with DOE's approach to determine AEER, discussed further in section III.B.7.g of this document. DOE is incorporating by reference the final version of AHAM PAC–1–2022 in newly established appendix CC1, with some additional amendments, generally consistent with the amendments proposed in the June 2022 NOPR, as discussed further in section III.B.7 of this document. DOE expects these additional amendments to improve test procedure representativeness.

b. Additional Industry Standards Referenced

Both ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022 reference ASHRAE 37–2009, which references certain industry test standards in specifying test conditions, measurements, and setup. In the June 2022 NOPR, DOE proposed to incorporate those industry standards specified in the relevant sections of ASHRAE 37–2009. Specifically, DOE proposed to incorporate by reference ANSI/AMCA 210, as referenced in section 6.2, ''Nozzle Airflow Measuring Apparatus,'' of ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022, for static pressure tap placement. DOE also proposed to incorporate by reference ASHRAE 41.1–1986 and ASHRAE 41.6–1994, as referenced in section 5.1, ''Temperature Measuring Instruments,'' of AHAM PAC–1–2022, for measuring dry-bulb temperature and humidity, respectively. 87 FR 34934, 34941.

DOE received no comments regarding the proposal to reference additional standards. For the reasons described in the June 2022 NOPR, is incorporating by reference these additional industry standards in the amended appendix CC and newly established appendix CC1.

4. Harmonization With Other AC Product Test Procedures

In the June 2022 NOPR, DOE proposed amendments to address and improve the representativeness of the test procedure for portable ACs, as required by EPCA. (*See* 42 U.S.C. 6293(b)(3))

In response to the June 2022 NOPR, NEEA and NWPCC recommended that DOE align the test procedures for portable ACs and room ACs, stating that these products are potential substitutes for one another and may be evaluated side-by-side by consumers. NEEA and NWPCC expressed concern that under the current test procedures for each product, portable ACs may appear to be more efficient than room ACs, whereas the opposite is generally the case. (NEEA and NWPCC, No. 22 at pp. 3–4)

DOE recognizes that consumers may consider portable ACs and room ACs for the same applications, and that it could be helpful to consumers for the portable AC and room AC ratings to be comparable. However, as discussed in a portable AC test procedure NOPR published on February 25, 2015, DOE also expects that portable ACs and room ACs have different operating hours and are likely utilized differently by consumers. 80 FR 10211, 10235. Data provided to DOE by the California IOUs in response to the June 2022 NOPR show that 47 percent of room AC owners surveyed typically use their room AC as a source of primary air conditioning compared to only 22 percent of portable AC owners surveyed. (CA IOUs, No. 20 at supp. p. 2) This suggests that, unlike room ACs that are typically used for primary cooling, the large majority of portable ACs are used for secondary or supplemental cooling (*i.e.,* not for primary cooling). Accordingly, the portable AC and room AC test procedures have different operating hours and test conditions, and the resulting CEER metric for each test procedure measures the efficiency of each distinct tested product during its representative period of use. In the future, DOE will continue to consider EPCA requirements and consumer usage data when amending both the portable AC and room AC test procedures.

5. Variable-Speed Technology

Since the previous portable AC test procedure rulemaking, portable ACs with variable-speed compressors have been introduced to the market. As compared to a portable AC with a single-speed compressor, a variable-speed portable AC can use an inverter-driven variable-speed compressor to maintain the desired temperature without cycling the compressor motor and fans on and off. The unit responds to surrounding conditions by adjusting the compressor rotational speed based on the cooling demand. At reduced speeds, variable-speed compressors typically operate more efficiently than a single-speed compressor under the same conditions.

The current portable AC test procedure does not account for improved efficiency of variable-speed portable ACs that automatically adjust their compressor operating speed and overall performance based on the cooling load of the conditioned space. Under the currently applicable appendix CC, the cooling capacity (as expressed by the SACC metric) does not reflect the reduced cooling provided at the lower outdoor test temperature (83 °F) in normal operation, because the test procedure does not allow single-speed units to cycle or variable-speed units to reduce their speed, as they would in normal operation. Similarly, the measured efficiency (as expressed by the current CEER metric) does not reflect the efficiency benefits associated with a variable-speed portable AC relative to a single-speed portable AC when operating at low outdoor temperature conditions.

In this final rule, DOE is amending appendix CC to adopt test provisions to provide more representative measures of SACC and CEER for variable-speed portable ACs. The amendments require testing variable-speed portable ACs at the low temperature (*i.e.,* 83 °F) test condition, in addition to the two test conditions currently specified for testing single-speed units. Incorporating the performance at this new test condition produces more representative values of SACC and CEER for variable-speed units in comparison to single-speed units. For variable-speed units, DOE is also introducing a new SACC metric that reflects operation at full speed (referred to as $SACC_{Full}$) to allow

for comparisons of SACC between single-speed and variable-speed units on a like-to-like basis and to ensure that measured CEER values for variable-speed portable ACs are compatible with the energy conservation standards currently specified at 10 CFR 430.32(cc) for products manufactured on or after January 10, 2025.

For newly established appendix CC1, this final rule includes the same new low temperature test condition for variable-speed units. Additionally, appendix CC1 defines a new SACC metric, applicable to both single-speed and variable-speed units, that accounts for the reduced cooling capacity provided by both types of units at the low temperature test condition. Appendix CC1 defines a new efficiency metric (*i.e.,* AEER) that, in addition to accounting for the reduced operation of variable-speed units at the low temperature test condition, better accounts for the cyclic behavior of single-speed units at low temperature conditions.

The specific amendments related to each of these issues are discussed in detail in section III.B.7 of this document, including summaries of comments received in response to the specific amendments proposed in the June 2022 NOPR.

As discussed, DOE has issued the LG Waiver and Midea Interim Waiver, both of which specify alternate test procedures for certain basic models of variable-speed portable ACs. 85 FR 33643; 86 FR 17803. This final rule adopts provisions that address the issues presented in both the LG Waiver and Midea Interim Waiver. Upon the compliance date of the test procedure revisions to appendix CC, the LG Waiver and Midea Interim Waiver will automatically terminate. 10 CFR 430.27(h)(3).

6. Representative Average Period of Use

a. Operational Modes

The measured energy performance of a portable AC includes energy use associated with cooling mode and off-cycle mode during the cooling season, and inactive mode and off mode for the entire year. In the June 2022 NOPR, DOE considered whether operation in other modes—namely, heating mode, air circulation mode, and dehumidification mode—should be included in the portable AC test procedure. DOE tentatively determined not to address these modes and sought comment on this tentative determination. 87 FR 34934, 34953–34954. Comments received on heating mode, air circulation mode, and dehumidification mode are discussed in sections III.B.8, III.B.9, and III.B.10 of this document, respectively.

b. Hours of Operation

To determine the energy use during a representative period of use, the currently applicable DOE test procedure assigns the following hours of operation for each mode: 750 hours for cooling mode, 880 hours for off-cycle mode, and 1,355 hours for inactive mode or off mode. (*See* section 5.3 of appendix CC.) These operating hours were established in the June 2016 Final Rule. In that rule, DOE derived these values from the existing operating hours for room ACs, noting that little usage data for portable ACs existed at that time. DOE adjusted the room AC usage data to reflect portable AC usage; for example, inactive mode and off mode estimates outside of the cooling season were decreased because portable ACs are more likely to be unplugged outside of the cooling season as compared to room ACs, which are less portable.[8] 81 FR 35241, 35258–35259.

As discussed in the June 2022 NOPR, DOE maintains that the analysis used to develop appendix CC was based on the best available data for portable AC operation at the time, although it did not take into account cyclic behavior. To maintain compatibility with existing energy conservation standards for portable ACs, DOE did not propose any changes to the operating hours in the amended appendix CC in the June 2022 NOPR, but proposed other appendix CC modifications to account for variable-speed portable AC efficiency benefits relative to single-speed portable ACs, specifically associated with the avoidance of cycling losses, as discussed in section III.B.7.f of this document.

In appendix CC1, to increase overall test procedure representativeness by accounting for cyclic behavior in single-speed portable ACs, or the avoidance of cycling for variable-speed units, DOE proposed in the June 2022 NOPR to reassess the off mode and inactive mode hours for certain product configurations to reflect hours previously considered as part of off-cycle mode. The operating hours defined in appendix CC distinguish between off-cycle mode and cooling mode. By definition, when portable ACs are in cooling mode, the compressor is on, meaning that DOE expects 750 hours of compressor operation per year for single-speed portable ACs. Using the AHRI 210/240 fractional bin approach discussed in the June 2022 NOPR, DOE determined that single-speed portable ACs operate their compressors for 164 hours per year at the 95 °F test condition and for 586 hours per year at the 83 °F test condition. 87 FR 34934, 34945. As discussed in the June 2022 NOPR—based on the AHRI 210/240 Building Load Calculation found in section 11.2.1.2 of that standard—DOE expects that single-speed portable ACs operate at a reduced load at the 83 °F test condition, equal to 60 percent of the full cooling load. Therefore, at the reduced load represented by the 83 °F test condition, DOE estimates a single-speed portable AC would operate in cooling mode (*i.e.,* compressor on) for 60 percent of that time and off-cycle mode (*i.e.,* compressor off) for the remaining 40 percent. Accordingly, based on DOE's estimate of 586 annual cooling-mode hours assigned to the 83 °F cooling-mode test condition, which represent 60 percent of the total operating hours at reduced load conditions, DOE estimated that there are 977 total operating hours at the 83 °F cooling mode test condition (*i.e.,* including both cooling mode and off-cycle mode for a single-speed unit) and therefore estimated there are a total of 391 annual off-cycle mode hours. Because at low loads variable-speed units operate continuously at a lower compressor speed during periods of time when single-speed units are in off-cycle mode, DOE proposed to set the variable-speed portable AC operating hours at the low test condition equal to the single-speed portable AC operating hours in cooling mode at the low test condition and off-cycle mode. 87 FR 34934, 34944–34946.

Table III.1 summarizes the June 2022 NOPR proposals for the annual operating hours for portable ACs in appendix CC and the newly proposed appendix CC1.

[8] Further information regarding the development of the operating hours is provided in the February 25, 2015 NOPR and November 27, 2015 supplemental NOPR for the previous portable AC test procedure rulemaking, available at *www.regulations.gov/document/EERE-2014-BT-TP-0014-0009* and *www.regulations.gov/document/EERE-2014-BT-TP-0014-0021*, respectively.

TABLE III.1—ANNUAL OPERATING HOURS FOR PORTABLE ACS AS PROPOSED IN JUNE 2022 NOPR

Operating mode	Appendix CC	Appendix CC1
Cooling Mode, 95 °F	[1] 750	164.
Cooling Mode, 83 °F	[1] 750	586 (Single-Speed). 977 (Variable-Speed).
Off-Cycle Mode	880	391 (Single-Speed). 0 (Variable-Speed).
Off/Inactive Mode	1,355	1,844.

[1] These operating mode hours are for the purposes of calculating annual energy consumption under different ambient conditions and are not a division of the total cooling mode operating hours. 750 represents the total cooling mode operating hours.

NYSERDA and the Joint Commenters supported DOE's proposed modified operating hours in appendix CC1. NYSERDA asserted that they better reflect reduced capacity at lower outdoor temperatures and account for the relationship between cyclic behavior and off-cycle mode of single-speed portable ACs. The Joint Commenters believe that DOE's approach will better represent the operation of single-speed and variable-speed portable ACs. (NYSERDA, No. 17 at p. 2; Joint Commenters, No. 19 at p. 1)

Rice supported deriving the number of operating hours at 95 °F for both single-speed and variable-speed units from the fractional hours of occurrence from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 210/240, ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment'' (''AHRI 210/240''). Rice commented that the variable-speed operating hours should be identical to that proposed for single-speed units (586 hours), assuming that the 83 °F delivered capacity for variable-speed units at reduced speed is given as the capacity matching the required house load at 83 °F per AHRI 210/240 at 100-percent sizing. Rice also stated that using the fractional off times (0.4 for single-duct units and 0.4637 for dual-duct units) multiplied by the effective single-speed hours at net cyclic capacity would result in 234 and 271 off-cycle mode hours for single-duct and dual-duct single-speed units, respectively. The off-cycle mode hours would be 0 for the variable-speed units. (Rice, No. 21 at p. 1)

Regarding the proposal from Rice to allocate a total of 586 hours to cooling mode and off-cycle mode for both single-speed and variable-speed portable ACs at the 83 °F test condition, as discussed previously, DOE has previously determined and maintains that the representative number of cooling mode operating hours for single-speed portable ACs (*i.e.,* compressor on hours) is 750 hours for the entirety of the cooling season, with 586 of those hours at the 83 °F test condition. According to the Rice proposal, only 352 or 315 cooling mode hours at the 83 °F test condition would be considered, for single-duct or dual-duct portable ACs, respectively, which would underrepresent the total number of hours typically spent with the compressor operating in cooling mode. The DOE approach, as described previously, considers the same total number of operating hours for single-speed and variable-speed units in cooling mode and off-cycle mode, thereby maintaining consistency with prior analyses and providing a consistent basis of comparison among different portable AC configurations. This approach aligns with the main objective of the approach suggested by Rice while ensuring the representativeness of test results.

For these reasons, in this final rule DOE is adopting the operating hours proposed in the June 2022 NOPR for appendix CC1, as shown in Table III.1. As discussed previously, DOE did not propose any amendments to the operating hours in appendix CC and is not adopting any amendments to those operating hours in this final rule.

7. Configurations

The current portable AC test procedure in appendix CC addresses two configurations of portable ACs: dual-duct and single-duct. Appendix CC currently requires that portable ACs that are able to operate as both a single-duct and dual-duct portable AC as distributed in commerce by the manufacturer must be tested and rated for both duct configurations. (*See* section 3.1.1 of appendix CC.)

In the June 2022 NOPR, DOE did not propose any amendments to the configurations addressed by the test procedure in appendix CC and proposed to adopt the same requirements in the new appendix CC1. 87 FR 34934, 34946.

The Joint Commenters stated that it is important to continue to require testing and rating for units with both single-duct and dual-duct configurations in order to provide consumers with relevant information and to ensure that these units meet minimum standards with either configuration. The Joint Commenters supported DOE's proposal to maintain the requirement that if a portable AC can operate in both single-duct and dual-duct configurations, the model should be tested and rated for both configurations. (Joint Commenters, No. 19 at p. 2)

NEEA and NWPCC supported maintaining requirements for separately testing both portable AC ducting configurations given the difference in performance between products with these configurations. (NEEA and NWPCC, No. 22 at p. 3)

For the reasons discussed in the previous paragraphs and in the June 2022 NOPR, DOE is maintaining in appendix CC and adopting in appendix CC1 the distinction between single-duct and dual-duct configurations and continues to require that a unit able to operate as both a single-duct and dual-duct portable AC, as distributed in commerce by the manufacturer, must be tested and rated for both duct configurations.

a. Combined-Duct Units

As discussed previously in section III.B.2 of this document, the Midea Interim Waiver provided specifications to accommodate the ''combined-duct'' configuration of the specified Midea basic models and DOE is adopting a new definition for ''combined-duct'' in this final rule.

In the June 2022 NOPR, DOE proposed to include provisions in both appendix CC and appendix CC1 to test combined-duct portable ACs using an adapter to interface with the combined duct to allow for individual connections of the condenser inlet and outlet airflows to the test facility's measuring apparatuses. DOE further proposed specific instructions requiring 16 thermocouples and their placement radially and along the length of the duct to measure temperature variations on the surface of the combined duct. These combined-duct portable AC test provisions proposed in the June 2022 NOPR were consistent with the test

procedure approved by DOE in the Midea Interim Waiver. 87 FR 34934, 34942.

DOE received no comments regarding the combined-duct portable AC test provisions. In this final rule, for the reasons discussed in the June 2022 NOPR and Midea Interim Waiver, DOE is adopting the test provisions discussed above for combined-duct portable ACs in appendix CC and appendix CC1.

In the June 2022 NOPR, DOE did not propose any amendments to the duct test setup for single-duct or dual-duct portable ACs that do not contain a combined duct. Appendix CC requires that four thermocouples be placed on the outside of the duct, or ducts, to measure external temperature. AHAM PAC–1–2022 has adopted the same combined-duct approach for all duct configurations in terms of thermocouple placement, requiring that the duct test setup for all portable ACs employ 16 thermocouples per duct. DOE has reviewed this approach in AHAM PAC–1–2022 and concludes that the increased number of thermocouples for single-duct and dual-duct portable ACs that do not contain a combined duct is unnecessary and increases test burden, given that temperature is unlikely to vary radially for any given single duct. The AHAM PAC–1–2022 approach would require the lab to maintain, mount, and monitor many times more thermocouples than are necessary for this testing, and because increasing the number of thermocouples would not improve the accuracy of the test procedure for non-combined-duct units, this increase in test burden is not justified. Therefore, DOE maintains the previous approach in appendix CC and appendix CC1 to require that only four thermocouples be adhered to each duct for single-duct and dual-duct portable ACs, except combined-duct portable ACs, as discussed previously.

8. Cooling Mode

a. Single-Speed Test Conditions

Section 4 of appendix CC measures cooling capacity and overall power input in cooling mode using one test condition for single-duct units and two test conditions for dual-duct units. For single-duct units, the test procedure specifies an 80 °F dry-bulb/67 °F wet-bulb condenser (''outdoor'') inlet air test condition. For dual-duct units, condition A specifies a 95 °F dry-bulb/75 °F wet-bulb outdoor test condition and condition B specifies an 83 °F dry-bulb/67.5 °F wet-bulb outdoor test condition. *See* section 4.1 of appendix CC for the current test requirements and Table 1 in section 4.1 of appendix CC for the list of test conditions.

In the June 2022 NOPR, DOE proposed to maintain the existing test conditions for single-speed portable ACs in appendix CC. In the June 2022 NOPR, DOE also proposed the same single-speed portable AC test conditions in appendix CC1. 87 FR 34934, 34946–34947.

In response to the June 2022 NOPR, Rice recommended that DOE consider using a 92.5 °F interpolated value in place of the measured 95 °F values, stating that 92.5 °F is the true midpoint of the 85 °F to 100 °F temperature range used in AHRI 210/240. (Rice, Public Meeting Transcript, No. 16 at p. 29)

In past rulemakings, DOE has determined that a 95 °F outdoor test condition is representative of conditions when cooling is most needed, an important part of the average use cycle of portable ACs. 81 FR 35241, 35249. Furthermore, DOE notes that the 95 °F test condition is widely adopted in the portable AC industry, as demonstrated by its use in AHAM PAC–1–2015 and AHAM PAC–1–2022. While 92.5 °F is the midpoint of the temperature range in AHRI 210/240, EPCA requires that the DOE test procedure produce results that reflect a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) For the purposes of appendix CC, DOE utilized the building loads specified by AHRI 210/240 to determine that a 95 °F outdoor test condition produces the most representative results. On this basis, DOE continues to conclude that the 95 °F outdoor test condition is most representative of portable AC full-load performance and continues to define a 95 °F outdoor test condition in both appendix CC and appendix CC1.

In response to the June 2022 NOPR, AHAM expressed support for DOE's proposal to include in appendix CC one test condition for single-duct portable ACs and two test conditions for dual-duct portable ACs as these test conditions are identical to those found in the AHAM PAC–1–2022 Draft. AHAM also supported DOE's proposal to adopt in appendix CC two test configurations for single-duct variable-speed portable ACs and three test configurations for dual-duct variable-speed portable ACs as those test conditions were identical to those found in the AHAM PAC–1–2022 Draft. According to AHAM, this proposal supports its request to incorporate the final version of AHAM PAC–1–2022 in a final rule as the Federal test procedure. (AHAM, No. 18 at pp. 2–3)

For the reasons previously discussed, DOE is maintaining the existing test conditions for single-speed portable ACs in appendix CC and appendix CC1 in this final rule.

b. Variable-Speed Compressor Speed Test Conditions and Configurations

The alternate test methods specified in the LG Waiver and Midea Interim Waiver maintained the test conditions from appendix CC with respect to dry-bulb and wet-bulb temperature. However, the alternate test methods added compressor speed specifications to the test conditions for variable-speed units (*e.g.,* a full speed and a reduced speed for single-duct units at condition C, and a full speed at the higher temperature test condition, condition A), and two other tests (*e.g.,* one at full speed and the other at reduced speed at the lower temperature test condition, condition B). In the June 2022 NOPR, DOE proposed to amend appendix CC to adopt the approach used in the LG Waiver and Midea Interim Waiver to address variable-speed portable ACs. 87 FR 34934, 34942–34944.

In the June 2022 NOPR, DOE also proposed to adopt in the new appendix CC1 the same compressor configurations as in the LG Waiver and Midea Interim Waiver, except requiring only the low compressor speed configuration at the 83 °F test condition for variable-speed units. As proposed, this approach would be consistent with two of the three test conditions found in the AHAM PAC–1–2022 Draft. The AHAM PAC–1–2022 Draft included both a full-speed and a reduced-speed compressor configuration at the 83 °F test condition for variable-speed units. As discussed in the June 2022 NOPR, DOE expects that portable ACs will typically encounter reduced cooling loads when the outdoor temperature is 83 °F, based on the building load calculation found in section 11.2.1.2 of AHRI 210/240. Thus, DOE considers the most representative mode of operation for variable-speed portable ACs to involve reduced compressor speed when operating at the 83 °F (and therefore lower cooling load) test condition. 87 FR 34934, 34944.

AHAM cited its AHAM Home Comfort Study, which found that the two most-common reasons for choosing a portable AC are the ability to move the unit from room to room (34 percent of consumers), and the ability to store the unit elsewhere in cooler weather (36 percent of consumers). AHAM stated that portable ACs may run at higher speeds when moved due to experiencing a ''hard start'' in an unconditioned, newly occupied space, and, that it is unlikely that low speed would be significantly utilized in these scenarios. AHAM stated that units may

run at higher speeds even at lower outdoor temperatures as the conditioned space gets closer to the set point. AHAM also noted that the 2020 RECS showed that the control setting most used by consumers of individual AC units is to turn the equipment on or off as needed. AHAM urged DOE to consider full speed operation at 83 °F to maintain consistency with the AHAM PAC–1–2022 Draft and asserted that this would improve the representativeness of the test procedure. AHAM also presented data from connected portable ACs to support the use of high-speed performance to represent operation at the 83 °F test condition. The data presented by AHAM show the average amount of running time required to reach the portable AC setpoints in the morning and in the evening for nine portable ACs. AHAM also included the average number times the portable ACs cycled per day. (AHAM, No. 18 at p. 8–9)

DOE appreciates the consumer usage data supplied by AHAM in its response to the June 2022 NOPR. While DOE agrees that portable ACs may run at full compressor speed after being plugged in following a move from one room to another, DOE expects that it is unlikely that consumers move portable ACs from room to room as part of the average daily operation of their portable AC, given the amount of effort involved in uninstalling and reinstalling the ducts and window mounting bracket, and the likelihood that cooling is generally needed in the same room every day. Upon review of the supplied connected portable AC data, while they show that portable ACs on average take longer to reach their set point in the morning than in the evening and that portable ACs cycle on average more than once per day, the data do not definitively show that full-load operation should be represented as part of the average period of use for an outdoor temperature of 83 °F. In order to determine that portable ACs spend a significant amount of time in full-load operation at the 83 °F test condition, DOE would require information relating to: (1) the percentage of operating time spent or energy consumed by portable ACs under full load relative to under reduced load; and (2) the outdoor temperatures experienced during the data collection period. DOE would also need to determine that the data are representative of average portable AC operation. The data present no definitive information on operating time, energy use, or outdoor temperature and the set lacks key context to determine the representativeness of the sample, such as unit size, room size, and geographic location. Further, if DOE were able to determine that these data are representative and that full-load operation should be considered as representative of part of the average use cycle at lower temperatures, the data do not indicate how much weight to give to such operation in calculations. Without clear usage data showing otherwise, DOE continues to conclude, based on the AHRI 210/240 building load calculation, that the most representative capacity measurement for the 83 °F outdoor temperature condition captures reduced-speed operation for variable-speed units and cyclic behavior for single-speed units.

While the 2020 RECS data cited by AHAM do suggest that 36 percent of portable AC users mainly operate their unit by turning it on and off, the data miss key context regarding how frequently users turn their equipment on and off and the test conditions at which they do so. Without this information, DOE cannot: (1) estimate the amount of time or energy spent in full load due to this operation; (2) determine how much of this operation should be attributed to the average period of use at the 83 °F outdoor temperature condition; or (3) conclude from the RECS data that full-load operation is a representative part of the average period of use at the 83 °F outdoor temperature condition. As the data provided by AHAM is inconclusive with regards to full-speed operation at the 83 °F test condition, DOE expects that portable ACs will typically encounter reduced cooling loads when the outdoor temperature is 83 °F, based on the building load calculation found in section 11.2.1.2 of AHRI 210/240. Thus, and lacking conclusive user data that show otherwise, DOE continues to conclude that the most representative mode of operation for portable ACs at lower-temperature (and therefore lower cooling load) test conditions involves reduced compressor speed for variable-speed portable ACs and cyclic operation for single-speed portable ACs. For this reason, the DOE test procedure adopted in this final rule requires testing variable-speed portable ACs at a single representative reduced-speed test condition and DOE is providing annual hours of operation at the 83 °F test condition for cooling mode operation in the new appendix CC1.

c. Compressor Speed Control Methodology

In the June 2022 NOPR, DOE proposed that for variable-speed portable ACs, in both appendix CC and the proposed new appendix CC1, the full compressor speed be achieved by using ''native controls'' (*i.e.,* with user controls) with the thermostat setpoint set at 75 °F, and achieve the low compressor speed using supplemental test instructions and settings provided by the manufacturer to DOE and laboratories. The approach proposed in the June 2022 NOPR is consistent with the alternate test procedure specified in the Midea Interim Waiver and with AHAM PAC–1–2022 but represents a change from the procedure specified in the LG Waiver, which specifies using supplemental test instructions and settings provided by the manufacturer to achieve full compressor speed, and would require re-testing of the models listed in that waiver. 87 FR 34934, 34947.

The Joint Commenters supported DOE's proposal to require that variable speed units operate under their native controls, with the thermostat setpoint at 75 °F, to achieve the full compressor speed operation. The Joint Commenters asserted that this would better reflect how a variable-speed unit would operate in the field compared to testing at fixed manufacturer settings. (Joint Commenters, No. 19 at pp. 1–2)

For the reasons discussed in the preceding paragraphs and in the June 2022 NOPR, in revisions to appendix CC and the new appendix CC1, DOE is adopting the native control and manufacturer setting approach set forth in the Midea Interim Waiver and proposed in the June 2022 NOPR, which are consistent with the compressor speed setting requirements contained in AHAM PAC–1–2022.

d. Seasonally Adjusted Cooling Capacity

Under the current test procedure, a unit's SACC is calculated as the weighted average of two full-load tests at the 95 °F and 83 °F test conditions. (*See* section 5.2 of appendix CC.) The LG Waiver and Midea Interim Waiver changed the operating condition for variable-speed portable ACs at the 83 °F outdoor temperature test condition to use a reduced-speed test. As discussed in the June 2022 NOPR, DOE expects that portable ACs will typically encounter reduced cooling loads when the outdoor temperature is 83 °F, based on the building load calculation found in section 11.2.1.2 of AHRI 210/240. Thus, DOE considers the most representative mode of operation for portable ACs at the 83 °F (and therefore lower cooling load) test condition to involve reduced compressor speed for variable-speed portable ACs. 87 FR 34934, 34944.

Because reduced-compressor speed operation is most representative of performance at 83 °F, DOE proposed in the June 2022 NOPR to adopt for appendix CC the Midea Interim Waiver approach of determining SACC for variable-speed portable ACs using the low compressor speed to represent part-load operation at the 83 °F outdoor temperature test condition. DOE additionally proposed to add a new capacity metric for variable-speed portable ACs in appendix CC, $SACC_{Full}$, which calculates capacity using full compressor speed performance at the lower test condition to facilitate consumer comparisons between single-speed and variable-speed portable ACs. For appendix CC1, DOE proposed to account for single-speed cyclic behavior and variable-speed low compressor speed operation expected at lower loads by modifying the SACC calculation to reflect reduced capacity when operating at the low (83 °F) test condition. 87 FR 34934, 34948.

NYSERDA supported DOE's proposed modified SACC in appendix CC1, asserting that they better reflect reduced capacity at lower outdoor temperatures and account for the relationship between cyclic behavior and off-cycle mode of single-speed portable ACs. (NYSERDA, No. 17 at p. 2)

In response to the June 2022 NOPR, AHAM requested that DOE clarify how the proposed appendix CC1 capacity factors were calculated along with the base data used in these calculations. (AHAM, Public Meeting Transcript, No. 16 at p. 24)

The California IOUs also urged DOE to provide more details on how the load factors for single-duct and dual-duct units were derived using AHRI Standard 210/240. (California IOUs, No. 20 at p. 2)

As discussed in the June 2022 NOPR, DOE calculated the load factors based on the building load calculation in section 11.2.1.2 of AHRI 210/240 to estimate the typical cooling load when the outdoor temperature is 83 °F, assuming that full-load conditions are at a temperature of 95 °F. For single-duct units, this load factor is calculated to be 0.6. While all portable AC configurations experience the same indoor cooling load at each of the test conditions, dual-duct portable AC performance is impacted by the changes in the outdoor air temperature (*i.e.,* cooling capacity increases relative to the 95 °F outdoor condition as outdoor process air temperature decreases due to the cooler outdoor air being more effective at removing heat from the condenser). Single-duct portable ACs do not experience this effect because the air entering the condenser is always the same indoor air temperature of 80 °F, regardless of the outdoor air temperature. This cooling capacity increase results in a full-load cooling capacity for dual-duct portable ACs at 83 °F that is higher than the full-load cooling capacity at 95 °F, which is the basis of the AHRI 210/240 building load calculation used to calculate load factors. Therefore, DOE used a capacity adjustment factor developed during the room AC rulemaking using thermodynamic modeling [9] to estimate the cooling capacity increase for dual-duct portable ACs when operating at the 83 °F test condition relative to the 95 °F test condition, and thereby adjusted the single-duct cooling load factor of 60 percent as listed in AHRI 210/240 to a cooling load factor of 53.63 percent of full load operation for dual-duct portable ACs when operating at the 83 °F outdoor temperature. 87 FR 34934, 34948.

Rice noted that had the single speed ACC_{83} values been defined as the compressor-on capacities at 83 °F, their run time hours would be less and different for the single-duct and dual-duct cases. (Rice, No. 21 at p. 1)

The ACC at the 83 °F test condition in appendix CC1 represents the total cooling provided per hour at a given test condition, and accounts for cyclic behavior in single-speed units by using a fractional load factor rather than by adjusting the operating hours spent in cooling mode. While it would be possible to adjust the operating hours to account for the cyclic behavior, the test procedure accomplishes the same goal while maintaining the representative operating hours discussed above by multiplying the capacity measured for single-speed units at the 83 °F test condition by the load factor (different for single-duct and dual-duct units) to adjust for the percent of time spent in off-cycle mode with the compressor off when the unit is not providing any cooling.

AHAM opposed DOE's proposed calculation of SACC including low compressor speed as, according to AHAM, the proposed SACC calculation is not representative of the normal operation of a variable-speed portable AC and would increase consumer confusion. AHAM stated that although seasonal weighting for different temperature conditions is appropriate, the full capability of portable ACs at each temperature condition should be the reported capacity, as is the case for central and room ACs. AHAM stated that variable-speed portable ACs are likely to spend a significant portion of time at high compressor speed, even at a lower temperature condition; therefore, DOE should require only one SACC calculation, equivalent to $SACC_{Full}$. AHAM stated that $SACC_{Full}$ should suffice as a basis of comparison between single- and variable-speed units and suggested using AHAM PAC–1–2022 Draft, which calculates SACC using only full compressor speed. AHAM added that changing the capacity metric for portable ACs to further lower reported portable AC efficiency is unwarranted as AHAM PAC–1–2022 Draft accounts for efficiency losses particular to portable ACs. (AHAM, No. 18 at pp. 3–4, 6)

EPCA requires that DOE's test procedures be reasonably designed to produce test results that measure energy efficiency and estimated annual operating cost during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) As the SACC metric is determined using the DOE test and also used to estimate annual operating cost, EPCA requires that the SACC metric be representative of an average use cycle. As discussed previously, DOE considers the most representative mode of operation for portable ACs at the 83 °F (and therefore lower cooling load) test conditions to involve reduced compressor speed for variable-speed portable ACs. Because reduced-compressor speed operation is most representative of performance at 83 °F, in appendix CC, variable-speed SACC is calculated using the capacity measured from the reduced compressor speed configuration in accordance with the LG Waiver and Midea Interim Waiver approach. The $SACC_{Full}$ metric is employed and represents full-speed capacity at both test conditions, as recommended by AHAM, to allow consumers to easily compare the capacities of variable-speed and single-speed portable ACs and to maintain compatibility with the existing portable AC standards, which are calculated based on single-speed SACC. The approach in appendix CC maintains a representative capacity metric for variable-speed portable ACs (SACC), while addressing comparability with the new capacity metric ($SACC_{Full}$).

AHAM opposed DOE's proposal in appendix CC1 to include de-rating factors for single-duct units to account for cyclic behavior from part-load operation at the low (83 °F) test condition for comparison between single-speed and variable-speed models. AHAM stated that home appliance

[9] For more information on this capacity adjustment for room ACs, see the test procedure final rule published on March 29, 2021. 86 FR 16446, 16458.

manufacturers believe capacity entails the unit's ability to cool down a room (*i.e.,* what the unit is capable of providing) and compared this rationale with other home appliances to support the same approach for portable AC capacity reporting. According to AHAM, capacity representations should be based on what the unit is capable of. AHAM added that the AHRI standard only measures capacity using full speed and therefore is not used in the correct context under DOE's proposed de-rating value for single-duct portable ACs, which is based on the standard. AHAM requested that de-rating factors should be the same for single-duct and dual-duct units as single-duct units will experience a decreased load at the low ambient temperature as well due to the lower temperature of infiltration air. According to AHAM, DOE's proposal inappropriately punishes dual-duct units when decreased operation could translate to increased overall efficiency. (AHAM, No. 18 at p. 4–6)

As discussed previously and in the June 2022 NOPR, because DOE determined that the low compressor speed test configuration at the low temperature test condition is most representative of portable AC operation, the most representative SACC metric is based on this capacity. This determination is consistent with the requirement under EPCA that the portable AC capacity metric be representative of an average period of use. (42 U.S.C. 6293(b)(3)) DOE has adopted a relevant industry standard, AHRI 210/240, to account for single-speed cyclic behavior under this test condition, with modifications necessary to ensure compatibility with the EPCA requirements regarding measurements of a representative use cycle, as provided for in section 8.c of appendix A to subpart C of to 10 CFR part 430.[10] In both appendix CC (for variable-speed units only) and appendix CC1 (for all units), DOE modified the load factor of 0.6 derived from the building load calculation for use in the ACC_{83} calculation to account for the difference in full-load cooling capacity at the 95 °F and 83 °F test conditions, as discussed in the June 2022 NOPR and in this final rule. 87 FR 34934, 34949. Single-duct units do not require this adjustment to the building load calculation because the air entering the condenser is always the same indoor air temperature of 80 °F and there is no difference in cooling capacity between test conditions.

AHAM stated that because the SACC calculations proposed by DOE are different than the nominal ASHRAE capacity, users who are accustomed to making purchase decisions based on nominal capacity (full capacity, as measured in the test procedure) or who have little or no background on SACC could be confused as a result. Additionally, AHAM stated that manufacturers would face additional burden in educating consumers and retailers on SACC and the deviation from ASHRAE ratings. AHAM also stated that DOE's proposed SACC calculation will exacerbate the challenges manufacturers already have in providing accurate room sizes. AHAM added that DOE's proposed SACC calculation results in a lower number than the SACC calculation in AHAM PAC–1–2022 Draft which, if implemented, would likely cause consumers to purchase a unit that is too large for the space and will perform less efficiently and less effectively than a smaller, properly sized unit. According to AHAM, the sizing recommendations found on DOE's website and EPA's website are based on the full capacity that the unit is capable of delivering and do not account for different compressor speeds, which may lead to consumers purchasing oversized units. AHAM stated that the SACC calculation in AHAM PAC–1–2022 Draft properly marks portable ACs and better matches these sizing tables, allowing consumers to select units that operate efficiently according to space needs. (AHAM, No. 18 at pp. 5–6)

DOE understands that the use of reduced-load performance in calculating SACC may be confusing to consumers in the short term, given the wide range of guidance available that refers to SACC calculated using only full-load performance. The new metric, $SACC_{Full}$, will be available for consumers to rely on until the new appendix CC1 is effective and required for representations. In the interim, while appendix CC remains in effect, manufacturers must additionally represent variable-speed portable AC capacity using $SACC_{Full}$, maintaining comparability with SACC as currently calculated using appendix CC. Manufacturers and retailers will have time to educate consumers on the changes to SACC resulting from the new test procedure during the period until appendix CC1 would become required for testing and rating.

In this final rule, DOE is maintaining the current SACC calculation for single-speed units in the revised appendix CC. The SACC for variable-speed units in appendix CC shall be calculated using the low compressor speed at the 83 °F test condition, consistent with the previously granted LG Waiver and Midea Interim Waiver. DOE is also amending appendix CC to include a new capacity metric for variable-speed portable ACs, $SACC_{Full}$, that uses the full compressor speed at the 83 °F test condition, and a corresponding definition for the new metric.

To ensure proper use of the new $SACC_{Full}$ metric when determining compliance of a variable-speed portable AC in accordance with the energy conservation standards that go into effect for single-duct and dual-duct portable ACs manufactured on or after January 10, 2025, DOE is amending the text in 10 CFR 430.32(cc) to clarify which capacity metric shall be used when determining compliance. Specifically, DOE is adjusting the equation description to clarify that for a single-speed portable AC, ''SACC'' is seasonally adjusted cooling capacity, in Btu/h, as determined in appendix CC, whereas for a variable-speed portable AC, ''SACC'' is the full-load seasonally adjusted cooling capacity (*i.e.,* $SACC_{Full}$), in Btu/h, as determined in appendix CC.

For appendix CC1, DOE is adopting an updated SACC calculation for all portable ACs that uses the measured cooling capacity at the 83 °F test condition. For variable-speed portable ACs, the cooling capacity at that condition is measured with low compressor speed. For single-speed portable ACs, the measured cooling capacity at the 83 °F test condition is multiplied by a load factor of 0.6 for single-duct units and 0.5363 for dual-duct units.

e. Weighting Factors

The current portable AC test procedure calculates SACC and CEER as weighted averages of the results of various calculations based on the measured capacity and power values at the two portable AC test conditions, representing outdoor temperatures of 95 °F and 83 °F. Both equations use weighting factors of 0.2 and 0.8 for the two test conditions, respectively. (*See* section 5.4 of appendix CC.)

In the June 2022 NOPR, DOE did not propose amendments to the existing weighting factors in appendix CC. However, for appendix CC1, based on the new set of operating hours, revised capacity equation, and new efficiency equation intended to improve representativeness (*see* sections III.B.6.b, III.B.7.d, and III.B.7.g of this final rule, respectively), in the June

[10] This appendix establishes procedures, interpretations, and policies to guide DOE in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under EPCA, and is commonly referred to as the ''Appendix A.''

2022 NOPR, DOE proposed weighting factors of 0.144 and 0.856 for the 95 °F and 83 °F test conditions, respectively. 87 FR 34934, 34949.

In response to the June 2022 NOPR, Rice suggested that weighting factors of 0.218 and 0.782 for the 95 °F and 83 °F test condition, respectively, are the appropriate basis for the new weighting factors in appendix CC1 in place of the weighting factors proposed in the NOPR. (Rice, No. 21 at p. 1)

Because DOE is adopting new operating hours in appendix CC1, as discussed previously in section III.B.6.b of this document, the weighting factors adopted in appendix CC1 must reflect those new operating hours in order to maintain internal test procedure consistency and produce the most representative capacity value. The weighting factors adopted in appendix CC1 are used in the SACC calculation, while the AEER calculation uses operating hours to properly represent the annual cooling provided within that efficiency calculation. Using the AHRI 210/240 building load calculation alone, without factoring in the appendix CC1 operating hours, results in weighting factors of 0.218 and 0.782. However, the weighting factors used in appendix CC1 represent the total time DOE expects portable ACs to operate at each test condition and not only the cooling mode operation at each test condition. Considering the portion of the appendix CC1 total cooling mode and off-cycle mode hours spent at each temperature condition (*see* Table III.1 in section III.B.6.b of this document), 14.4 percent of the total cooling mode hours are allocated to the 95 °F test condition and 85.6 percent to the 83 °F test condition, corresponding to weighting factors of 0.144 and 0.856. 87 FR 34934, 34949. DOE continues to conclude, as was proposed in the June 2022 NOPR and used in AHAM PAC–1–2022, that weighting factors of 0.144 and 0.856 corresponding to the 95 °F test condition and the 83 °F test condition, respectively, are representative of the portable AC average period of use. DOE is therefore adopting them for the SACC calculation in appendix CC1.

f. Cycling Losses

Historically, portable ACs have been designed using a single-speed compressor, which operates at full cooling capacity while the compressor is on. When the required cooling load in a space is less than the full cooling capacity of the unit, a single-speed compressor cycles on and off. This cycling behavior introduces inefficiencies often referred to as ''cycling losses.'' In addition, single-speed portable ACs may experience inefficiencies by continuing to operate the blower fan during compressor off periods after the evaporator coils have warmed to the point that any further fan operation does not contribute to the unit's overall cooling capacity. These two types of inefficiencies occur only for single-speed portable ACs. As discussed in the June 2022 NOPR, variable-speed ACs avoid such inefficiencies because their compressors run continuously, adjusting their speeds as required to match the cooling load. 87 FR 34934, 34949–34950.

As discussed in the June 2022 NOPR, DOE proposed a means of accounting for the losses associated with single-speed cyclical operation at reduced conditions, namely the use of a cycling factor (''CF'') of 0.82, in both appendix CC and the new appendix CC1, based on available test data and consistent with the value in AHAM PAC–1–2022, to adjust the measured efficiency to represent the expected losses when operating at the low test condition that are not otherwise captured as part of the test. 87 FR 34934, 34949–34950.

In response to the proposed cycling loss factor of 0.82 proposed in the June 2022 NOPR, DOE received the following comments.

The California IOUs agreed with DOE's methodology and the proposed cycling loss factor of 0.82 and requested any additional information regarding the units tested—such as the range of efficiency rating and capacity and if the tested units were single duct or dual duct, as well as the methodology used in unit selection. (California IOUs, No. 20 at p. 2)

ASAP and the Joint Commenters encouraged DOE to fully account for the losses of single-speed units in the determination of an appropriate CF value by including the energy required to operate the blower fan during compressor off periods after the evaporator coils have warmed to the point that any further fan operation does not contribute to the unit's overall cooling capacity. ASAP and the Joint Commenters believe the CF proposed by DOE is therefore too high and artificially deflates the calculated CEER of variable-speed units relative to the CEER of single-speed units. According to the Joint Commenters, if the efficiency metric fails to appropriately recognize the full performance benefits of variable-speed units, manufacturers will have less incentive to adopt variable-speed technology. (ASAP, Public Meeting Transcript, No. 16 at p. 16; Joint Commenters, No. 19 at p. 2)

The test procedure in both appendix CC and appendix CC1 accounts for the cyclic losses for single-speed units (*i.e.,* compressor cycling losses and fan operation in off-cycle mode). The cycling loss factor incorporated in the cooling mode power calculation for both appendix CC and appendix CC1 accounts for cycling losses due to the compressor itself turning on and off. The off-cycle mode power measurement as a part of the annual energy consumed in the denominator of the CEER and AEER calculations accounts for the energy used by the fan blower motor with the compressor off (*i.e.,* fan operation during off-cycle mode). In the CEER and AEER equations, these two types of cycling losses are addressed, with the cooling mode power as adjusted with the cycling loss factor and the off-cycle mode average power multiplied by the relevant operating hours to determine the total cooling mode and off-cycle mode energy use, which is considered along with the energy use for all other modes measured in the test procedure to calculate the total energy consumed. In this way, both CEER and AEER are fully representative of the energy use differences between single-speed and variable-speed portable ACs.

ASAP and the Joint Commenters believe that as DOE's test results showed significant differences in CFs across units (ranging from 76 to 86 percent), using a single CF for all single speed units would fail to capture the efficiency benefits of units with improved cycling performance. ASAP and the Joint Commenters therefore proposed that DOE consider establishing a conservative CF value and allow manufacturers who demonstrate improved performance under cycling operation to measure and use a CF value determined by testing. ASAP further requested that DOE require measurement of the CF in the test procedure to improve representativeness. (ASAP, Public Meeting Transcript, No. 16 at p. 16; Joint Commenters, No. 19 at p. 2)

Rice stated that DOE's proposed cycling loss factor of 0.82 appeared to be derived using the load factor for dual-duct portable ACs. Rice suggested that different cycling loss factors should therefore be used for the two different ducting configurations because they also have different load factors. According to Rice, this new single-speed single-duct portable AC cycling loss factor should be 0.844. (Rice, No. 21 at p. 2)

While DOE agrees that it would be most representative to test the cycling loss factor for each individual unit, such testing involves significant time and technician expertise that would represent a large test burden increase

that would not be outweighed by the potential benefit of increased accuracy in the cycling factor. To measure CFs for the June 2022 NOPR, DOE performed cyclic tests, which triggered single-speed portable AC cycling by remotely adjusting the setpoint of the test unit in a cyclic pattern while it was in the test chamber, simulating the behavior of the unit when the room temperature reaches the unit setpoint. Such a test required an additional hour or more of test time with the technician closely supervising the test. Additionally, this cyclic test procedure is not codified in any industry standard. Further, the test did not always produce results. In order to conduct the test, the unit must be controlled remotely from outside the test chamber. One unit in DOE's test sample was unable to be controlled in this way and so the test could not be conducted. The June 2022 NOPR test sample is representative of single-duct portable ACs, including units from three manufacturers and cooling capacities ranging between 4,000 Btu/h and 10,000 Btu/h. While there is some variation in the CFs measured during testing in support of the June 2022 NOPR, DOE maintains that using the average of the measured CFs is the best approach to produce a representative test procedure in appendix CC and appendix CC1, because it incorporates a representative sample of portable ACs and represents the only portable AC-specific cycling loss data available to DOE. Furthermore, this approach of using a universal average cycling loss factor from these data does not add any additional test burden, which would be significant should a cyclic test be performed for each unit. Additionally, while manufacturers may be able to mitigate some effects of cycling losses, single-speed portable ACs must cycle on and off to maintain a given load, which directly leads to cycling losses, suggesting that while there may be some differences in unit-specific CFs, it would be appropriate to reflect cycling losses inherent to all single-speed units using a single representative CF in lieu of overly burdensome and complex cycling tests. Therefore, DOE maintains that, for single-duct units, the average CF of 0.82 derived from cyclic portable AC testing conducted for the June 2022 NOPR is representative of efficiency losses attributable to compressor cycling, and DOE is therefore adopting this factor for single-speed units in appendix CC and appendix CC1.

To address comments from interested parties suggesting that the proposed cycling loss factors should reflect the behavior of all portable AC configurations, DOE completed additional investigative testing on dual-duct portable AC cycling loss factors. This testing was conducted in the same manner as the testing described in the June 2022 NOPR: DOE performed cyclic tests, which triggered single-speed portable AC cycling by remotely adjusting the setpoint of the test unit in a cyclic pattern while it was in the test chamber, simulating the behavior of the unit when the room temperature reaches the unit setpoint. DOE obtained cooling capacity and power data for two dual-duct units with test lengths of 10 minutes and 30 minutes. The relative efficiency during cycling operation as a percentage of efficiency during continuous operation for dual-duct portable ACs (*i.e.,* the cycling loss factors) observed from these tests are summarized in Table III.2.

TABLE III.2—TESTED CYCLING FACTORS FOR DUAL-DUCT PORTABLE ACS

Test Length	30 min (%)	10 min (%)
Unit 1	72	76
Unit 2	80	81
Combined Avg.	77	

While the test sample is limited and displays similar amounts of variance between units as the single-duct samples from the June 2022 NOPR, the data show that on average, and individually, the cycling loss factors for dual-duct portable ACs are lower than those originally proposed in the June 2022 NOPR. Based on these data and Rice's explanation that the difference in loading factors should lead to a difference in CFs, in this final rule DOE is adopting a CF of 0.77 for dual-duct portable ACs and maintaining the previously proposed CF of 0.82 for single-duct portable ACs in appendix CC and appendix CC1, thereby improving representativeness for both portable AC configurations as compared to the single CF specified in AHAM PAC–1–2022.

According to Rice, one would have expected a larger cyclic degradation factor compared to that previously determined for single-speed room ACs.[11] Rice suggested that this may be due to the room AC cyclic loss determination potentially being for continuous fan operation (*i.e.,* ''cool'' mode), which gives a higher cyclic degradation result than in an energy-saving mode. Rice therefore requested that DOE clarify if the cyclic loss factors were determined differently for the portable AC versus room AC applications and to provide a report on the details of the lab cyclic testing for both portable ACs and room ACs to best document this work as reference points for future investigations into cyclic loss factors in both cool mode and energy-saving mode for these products. (Rice, No. 21 at p. 2)

As described previously and in the June 2022 NOPR, DOE based the CFs for this portable AC test procedure on portable AC test data using a manual cycling approach, independent of the testing conducted for the recent room AC rulemaking. Additionally, the room AC cycling loss factor included fan operation, which the portable AC CF does not include because fan operation is measured by the off-cycle mode test. More information regarding the room AC rulemaking, including test data and discussion of the derivation of the cycling loss factor used for room ACs, can be found in the room AC test procedure rulemaking docket.[12]

In this final rule, DOE is accounting for cycling losses in the amended appendix CC using the test procedure waiver approach, as previously discussed. Based on DOE's investigative testing and feedback from commenters, DOE is amending appendix CC to adopt a CF of 0.82 and 0.77 for single-duct and dual-duct units, respectively, when calculating the performance of a theoretical comparable single-speed unit.

In the new appendix CC1, DOE accounts for cycling losses directly in the single-speed portable AC CEER calculation, using the same CF adopted for appendix CC, 0.82 for single-duct units and 0.77 for dual-duct units.

g. Energy Efficiency Calculations

The current portable AC test procedure at appendix CC represents efficiency using CEER, an efficiency metric calculated as the weighted average of the condition-specific CEER values, including the AEC in cooling mode, off-cycle mode, and off or inactive mode.

In the June 2022 NOPR, DOE proposed to retain the existing appendix CC approach when determining single-speed portable AC efficiency, but proposed to amend appendix CC to adopt the general approach from the LG

[11] For room ACs, DOE defines a CF of 0.81 for the lowest test condition (*i.e.,* test condition 4), for calculating the theoretical comparable single-speed room AC adjusted combined energy efficiency ratio. *See* section 5.3.8 of appendix F to subpart B.

[12] The room AC test procedure docket is available at *www.regulations.gov/docket/EERE-2017-BT-TP-0012.*

Waiver and Midea Interim Waiver to determine variable-speed portable AC efficiency. The waiver approach addresses the efficiency impacts of single-speed compressor cycling using a performance adjustment factor (''PAF''). The PAF, which represents the average performance improvement of the variable-speed unit relative to a theoretical comparable single-duct single-speed unit at reduced operating conditions, is applied to the measured variable-speed unit efficiency. 87 FR 34934, 34951.

Additionally, in the June 2022 NOPR, DOE proposed to add a new appendix CC1 that directly accounts for cycling losses in the efficiency ratings for all portable AC configurations by using a new efficiency metric, annual energy efficiency ratio (AEER), that represents efficiency as the total annual cooling divided by the total annual energy consumption (AEC), with single-speed compressor losses and reduced cooling at the low test condition all considered.

AHAM stated that DOE's proposed capacity calculation using a reduced compressor speed configuration results in a lower CEER for variable-speed units. AHAM opposed DOE's compressor speed methodology and recommended using AHAM PAC–1–2022 Draft, which calculates CEER with both high and low compressor speeds for the low temperature conditions. (AHAM, No. 18 at pp. 6–7)

While simply reducing the capacity values used in the CEER or AEER calculation without other changes to the efficiency equations would inherently reduce the calculated and rated efficiency, DOE notes that the CEER and AEER equations in appendix CC and CC1, respectively, also consider the power draw of variable-speed portable ACs at these lower capacities. Furthermore, using the capacity measured with the full compressor speed for the low test condition portion of the efficiency equation would not be representative of real-world operation. As discussed in the June 2022 NOPR and in section III.B.7.b of this document, DOE considers reduced compressor speed operation to be representative of variable-speed portable AC operation when the outdoor temperature is 83 °F, and AHAM has not provided sufficient evidence to justify the use of the full-speed operation as part of a representative average period of use, or what portion of the representative period of use full-speed operation would represent. Therefore, DOE continues to conclude that reduced compressor speed operation at the lower outdoor temperature condition is representative of average portable AC use and should be the basis for the CEER and AEER calculations.

AHAM stated that CEER calculations for portable ACs should be treated in the same fashion as similar products like room and central ACs where full compressor speed is considered at multiple air conditions and therefore should be updated accordingly by DOE. (AHAM, No. 18 at p.7)

As discussed previously in section III.B.6 of this section, DOE considers amendments to address and improve the representativeness of the test procedure, as required by EPCA. (*See* 42 U.S.C. 6293(b)(3)) When considering amending the portable AC test procedure to account for variable-speed operation in the June 2022 NOPR, DOE determined that the most representative compressor speed at the upper, 95 °F outdoor test condition was full speed and the most representative compressor speed at the lower, 83 °F outdoor test condition was low speed. 87 FR 34934, 34946–34947. Similarly, the room AC test procedure requires full compressor speed at the two higher outdoor temperature conditions and reduced compressor speed at the two lower outdoor temperature test conditions. The central AC test procedure, however, does include a full-load test at low-temperature test conditions, but this reflects the consumer usage patterns for central ACs, which are likely different than those for room ACs or portable ACs, which occur over a wider range of temperatures and a larger number of hours. Therefore, DOE continues to conclude that the CEER calculation for portable ACs should use reduced compressor speed measurements for capacity and power when calculating CEER in appendix CC.

The California IOUs supported DOE's proposal to change the efficiency metric for portable ACs to AEER given the differences in use and ducting between portable ACs and similar products. According to a recently survey conducted by the California IOUs,[13] 47 percent of room AC owners use their room ACs as the sole source of air conditioning compared to 22 percent of portable AC owners; all room AC condenser inlets draw air from the outside while only 13 percent of portable AC condenser inlets use outside air; 44 percent of portable AC users use their unit every day or most days compared to 67 percent of room AC users; and 54 percent of portable AC users are located in the West, while the largest percentage of room AC users are based in the Northeast (37 percent). Based on the data obtained from their recent survey, the California IOUs estimated an average weekly usage of 53 percent for portable ACs and 69 percent for room ACs, and suggested that these differences support DOE's decision not to align the portable AC and room AC test procedures and the proposal for the new AEER metric for portable ACs, clarifying to consumers that the efficiency ratings for room ACs and portable ACs are not comparable. (California IOUs, No. 20 at pp. 2–6)

AHAM stated that the approach in AHAM PAC–1–2022 Draft is representative with no need to depart from it and therefore urged DOE to follow its stated policy of adopting industry test procedures that satisfy statutory conditions rather than adopting a new efficiency metric that would further confuse consumers with respect to an appliance category that already uses too many metrics. AHAM added that SEER, CEER, and AEER are not sufficiently distinctive to provide meaningful information to the consumer. AHAM opposed DOE's approach to calculating AEER and urged DOE to continue using CEER as its efficiency metric. (AHAM, No. 18 at pp. 8–9)

As discussed in section III.B.3.a of this document, DOE considers many parts of AHAM PAC–1–2022 to be representative and is incorporating by reference and generally adopting the AHAM PAC–1–2022 test procedure in appendix CC1. However, as also discussed in section III.B.3.a, DOE considers reduced compressor speed operation to be most representative of portable AC use at the low test condition, based on the building load calculation found in AHRI 210/240. Therefore, DOE continues to conclude that an efficiency metric using capacity and power measurements must be based on the reduced compressor speed test configuration to calculate performance at the 83 °F outdoor test configuration as it is most representative and has adopted this approach in appendix CC1. In this final rule, DOE is adopting a new AEER energy efficiency metric for portable ACs in appendix CC1 to replace the CEER metric and adding a corresponding definition for the new AEER efficiency metric. The AEER metric generally aligns within the CEER equation in AHAM PAC–1–2022 but retains the low compressor speed operation as representative of performance at the low test condition.

Rice stated that as all the ACC values ACC_{83} for single- and variable-speed equipment are the net cyclic or reduced

[13] The full-length survey was provided to the docket along with the comment from the California IOUs and is available at *www.regulations.gov/comment/EERE-2020-BT-TP-0029-0020.*

speed values per appendix CC1, these values should all be multiplied by the same number of hours at 83 °F, which is equal to the fractional hours at 83 °F multiplied by 750 total hours, to give the delivered cooling at that condition in the numerator of the AEER equation. (Rice, No. 21 at p. 1)

DOE agrees that in appendix CC1, the capacity calculated for the 83 °F test condition, ACC_{83}, should be multiplied by the same number of hours for both single-speed and variable-speed units in the AEER equation, because ACC_{83} represents the rate of cooling provided by both types of units at that test condition, adjusted to account for the reduced amount of cooling provided by single-speed portable ACs due to cyclic behavior. According to the new appendix CC1 operating hours, DOE expects that variable-speed portable ACs operate in cooling mode for the entirety of the 977 hours spent at the 83 °F test condition, while single-speed units spend 586 hours in cooling mode and 391 of these hours in off-cycle mode when the outdoor temperature is 83 °F. For single-speed units, ACC_{83} is adjusted using a load factor to account for time spent with the compressor off in off-cycle mode due to cycling. For variable-speed units, ACC_{83} reflects the reduced compressor speed operation at the low test condition, and therefore the reduced cooling capacity of variable-speed compressors. Because ACC_{83} accounts for reduced cooling capacity (*i.e.,* for single-speed units, reflecting the time spent in off-cycle mode; and for variable-speed units, reflecting the reduced cooling provided during time spent at the low test condition), ACC_{83} should be multiplied by 977, the total number of hours associated with reduced cooling load operation (*i.e.,* for single-speed units, the total hours spent in cooling mode at the reduced temperature test condition and in off-cycle mode; and for variable-speed units, the total number of hours spent in cooling mode at the reduced temperature test condition).

Rice supported the use of AEER for portable AC applications given the potential for possible negative delivered cooling fractions for portable ACs and stated that in doing so, DOE seems to acknowledge that the current weighting factor method for CEER in appendix CC is only an approximation of the appropriate binned seasonal performance calculation. Rice further requested that manufacturers be required to report AEER in any case as AEER values can be used to estimate annual energy use, while CEER values cannot. In addition, Rice stated that AEER does not incur the approximations to seasonal performance of the existing weighting equations used for CEER, and that reporting AEER would allow consumers to make appropriate accurate cost savings and payback calculations for variable vs single-speed portable AC units. (Rice, No. 21 at pp. 2–3)

As discussed in the June 2022 NOPR, DOE is retaining the CEER equation from the LG Waiver and Midea Interim Waiver alternative test procedures for variable-speed units in appendix CC to maintain compatibility with existing standards. 87 FR 34934, 34944. While DOE agrees that the AEER calculation is the most representative way to calculate portable AC efficiency, the CEER calculation in the LG Waiver and Midea Interim Waiver reasonably represents the efficiency of a variable-speed portable AC relative to a single-speed portable AC and retains compatibility with the existing energy conservation standards. DOE is not amending the certification or reporting requirements for portable ACs in this final rule. Instead, DOE may consider proposals to amend the certification and reporting requirements for portable ACs under a separate rulemaking regarding appliance certification.

h. Load-Based Testing

The existing DOE and industry-accepted standards for testing portable ACs measure cooling capacity and energy efficiency ratio when the portable AC operates continuously at fixed indoor and outdoor temperatures and humidity conditions (*i.e.,* a constant-temperature test), using an air enthalpy approach.[14] In contrast, a load-based test either fixes or varies the amount of heat added to the indoor test room by the reconditioning equipment, while the indoor test room temperature is permitted to change and is controlled by the test unit according to its thermostat setting.

In the June 2022 NOPR, DOE discussed the challenges associated with load-based testing. In particular, DOE discussed its continuing expectation that a load-based test would reduce repeatability and reproducibility due to limitations in current test chamber capabilities—namely, the lack of specificity in industry standards regarding chamber dimensions and reconditioning equipment characteristics, which would negatively impact the representativeness of the results and potentially be unduly burdensome. 87 FR 34934, 34953. Recognizing that neither DOE nor commenters had provided approaches to mitigate these challenges, DOE did not propose to amend the DOE test procedures in appendix CC or appendix CC1 to adopt a load-based testing approach.

DOE received the following comments in response to the June 2022 NOPR regarding load-based testing.

The California IOUs supported DOE's proposed test procedure for variable-speed portable ACs by adjusting user controls and low compressor speed using manufacturer-provided instructions based on the limitations of using user controls to test performance at low compressor speed. However, the California IOUs requested that DOE continue to assess load-based testing to further improve the representativeness of the test procedures. (California IOUs, No. 20 at pp. 1–2)

The Joint Commenters expressed concern that the test procedure may not adequately represent the operation of variable-speed units under part-load conditions and believe that DOE should strive to move away from ''steady-state'' testing and toward load-based testing and approaches that would capture the performance of variable-speed units under unlocked native controls. (Joint Commenters, No. 19 at pp. 2–3)

NEEA and NWPCC believe that load-based testing would better reflect field use and is necessary to capture the impact of cycling and variable-speed performance of a unit operating under its onboard control logic. NEEA and NWPCC further stated that as the product performance of more complex systems becomes increasingly dependent on how well onboard logic control is implemented, DOE should evaluate and pursue load-based testing. (NEEA and NWPCC, No. 22 at p. 4)

Acknowledging the potential advantages of load-based testing as discussed in these comments, DOE continues to recognize that neither DOE nor commenters have identified approaches to mitigate the specific challenges associated with load-based testing, which would reduce repeatability and reproducibility. Furthermore, DOE considers the test procedures in appendix CC and appendix CC1, as amended and adopted in this final rule, as representative of portable AC operation, addressing the impacts of compressor cycling and reduced capacity at low loads and the relative efficiency benefits of variable-speed units, while maintaining repeatability and reproducibility. Therefore, DOE is not adopting a load-

[14] The air enthalpy approach entails measuring the air flow rate, dry-bulb temperature, and water vapor content of air at the inlet and outlet of the portable AC.

based test approach in appendix CC or appendix CC1 at this time.

i. Annual Energy Consumption Calculation

In the June 2022 NOPR, in appendix CC, DOE proposed to adopt the PAF-based approach from the LG Waiver and Midea Interim Waiver to determine variable-speed portable AC efficiency, a weighted-average approach for the CEER equation, and not to change the CEER equation for single-speed portable ACs. In appendix CC1, DOE proposed to adopt a new efficiency metric, AEER, to represent efficiency as the total annual cooling divided by the total annual energy consumption in the proposed new appendix CC1. 87 FR 34934, 34952–34953.

In response to the June 2022 NOPR, AHAM requested that DOE clarify the proposed calculation involving cycling losses in section 5.5.1 of appendix CC, specifically $P83_{Low}$. AHAM believes that this power variable is meant to reflect operation of a single-speed unit, which can only operate at full compressor speed, and therefore $P83_{Low}$ should be $P83_{Full}$. (AHAM, No. 18 at p. 3)

DOE agrees with AHAM that the power variable in the equation to calculate the theoretical comparable single-speed portable AC power at the lower outdoor temperature condition should read ''$P83_{Full}$'' instead of ''$P83_{Low}$,'' as the calculation utilizes the full compressor speed performance of the variable-speed test unit at the lower test condition to estimate the performance of a comparable single-speed portable AC. DOE notes that the June 2022 NOPR preamble discussion correctly refers to the power measured at test condition 2.B, and is correcting the calculation in this final rule.

9. Heating Mode

In the previous portable AC rulemaking, DOE did not establish an efficiency metric for heating mode, noting that available data suggest that portable ACs are not used for heating purposes for a substantial amount of time. 81 FR 35241, 35257.

In the June 2022 NOPR, DOE noted that no new data had been identified that would allow DOE to draw a different conclusion to the use of portable ACs to provide heating and thus, DOE requested comment on the tentative determination not to establish a heating mode efficiency metric in appendix CC and the proposed new appendix CC1. 87 FR 34934, 34953.

In response to the June 2022 NOPR, NYSERDA noted that portable ACs offering heating capabilities are becoming available on the market, as suggested by the New York Housing Authority's partnership with New York Power Authority to purchase 30,000 heat pump units through the Clean Heat for All program, which provides portable solutions for both heating and cooling.[15] NYSERDA urged DOE to take steps to ensure that the portable AC standard and test procedure address the testing of heat mode to better capture all the energy consumed by portable ACs across both heating and cooling use cases. (NYSERDA, No. 17 at pp. 1–2)

DOE recognizes that the market for portable ACs that offer a heating function is evolving and is expected to expand as States and other jurisdictions pursue building electrification strategies. DOE notes, however, that it currently lacks data and information necessary to inform the development of a test method that would produce test results that reflect a representative average use cycle or period of use for the heating function of a portable AC. Therefore, at this time, DOE is not amending the portable AC test procedure to include a measure of heating performance. DOE welcomes further information and data that could be used to inform the future development of a test method for the heating function of portable ACs.

10. Air Circulation Mode

In air circulation mode, a portable AC has activated only the fan or blower and the compressor is off. Unlike off-cycle mode, air circulation mode is consumer-initiated. Due to a lack of usage information for this mode, in the June 2016 Final Rule DOE did not adopt methods to measure or allocate annual operating hours to air circulation mode. 81 FR 35241, 35257.

In the June 2022 NOPR, DOE noted that due to a continued lack of relevant consumer usage data regarding the user-initiated air circulation mode, DOE could not determine typical operating hours in air circulation mode. Therefore, while appendix CC and the proposed new appendix CC1 would require testing in off-cycle mode, and the energy use in that mode would be considered part of the efficiency metric, DOE did not propose a test for user-initiated air circulation mode. 87 FR 34934, 34953–34954.

In response to the June 2022 NOPR, DOE received no comments on its tentative determination not to dedicate distinct operating hours or testing to user-initiated air circulation mode in appendix CC and proposed new appendix CC1.

In this final rule, DOE is not adopting, as part of appendix CC or appendix CC1, a measure of user-initiated air circulation mode energy consumption for portable ACs.

11. Dehumidification Mode

In the June 2022 NOPR, DOE discussed a comment received in response to the April 2021 RFI stating that most portable ACs provide a dehumidification feature and recommending that DOE further investigate its usage and consider including dehumidification mode in an updated test procedure. 86 FR 20044, 20051; 87 FR 34934, 34954.

In the June 2022 NOPR, DOE noted that it was unaware of available consumer use data regarding dehumidification mode, and the presence of a function is insufficient to indicate the frequency of its use. Given the lack of data, DOE was unable to address dehumidification mode in a representative manner and therefore tentatively determined to not include test procedure provisions regarding dehumidification mode in either appendix CC or the proposed new appendix CC1. 87 FR 34934, 34954.

In response to the June 2022 NOPR, NEEA and NWPCC requested that DOE collect dehumidification data for both portable and window ACs for future rulemakings regarding test procedure provisions for a dehumidification mode. (NEEA and NWPCC, No. 22 at p. 3)

DOE recognizes the potential benefit that dehumidification mode performance data could have for future rulemakings and other industry programs. However, given the lack of consumer use data confirming the prevalent use of dehumidification mode for portable ACs, and the burden associated with requiring reporting of dehumidification performance, DOE has determined that there is not sufficient energy consumption in this mode to justify the development of such a test at this time.

Therefore, DOE is not adopting dehumidification mode testing in appendix CC or appendix CC1 at this time.

12. Network Connectivity

Network connectivity implemented in portable ACs can enable functions such as providing real-time room temperature conditions or receiving commands via a remote user interface such as a smartphone. Because DOE was unable to establish a representative test configuration for assessing the energy consumption of network functionality

[15] Further information regarding the Clean Heat for All program can be found at *www.nypa.gov/news/press-releases/2021/20211220-decarbonize.*

for portable ACs due to a lack of consumer usage data, DOE proposed in the June 2022 NOPR to specify in both appendix CC and appendix CC1 that, if a portable AC has network functions, those network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If an end-user cannot disable the network functions, or the product's user manual does not provide instruction for disabling network settings, the unit is tested with the network settings in the factory default configuration for the duration of the test. 87 FR 34934, 34954–34955.

In response to the June 2022 NOPR, DOE received the following comments regarding network connectivity.

AHAM supported DOE's proposal regarding network functionality and noted that AHAM PAC–1–2022 adopts this provision. (AHAM, No. 18 at p. 3)

ASAP and the Joint Commenters requested that DOE test portable ACs that have network connectivity capabilities in their as-shipped configuration to better reflect consumer use and reduce test burden. The Joint Commenters and NYSERDA asserted that consumers are unlikely to adjust this type of capability from the original factory settings and therefore the proposal to turn off network functions does not reflect consumer use. The Joint Commenters further stated that such a provision would increase the representativeness of the test procedure and can easily be integrated into the test procedure with no expected test burden added. (ASAP, Public Meeting Transcript, No. 16 at pp. 27–28; Joint Commenters, No. 19 at p. 3; NYSERDA, No. 17 at p. 3)

NYSERDA encouraged DOE to incorporate network connectivity in the portable AC test procedure by requiring that connectivity be activated during testing to capture the energy used while accessing the connectivity circuitry. (NYSERDA, No. 17 at p. 3)

DOE appreciates the comments regarding default settings and recognizes the prevalence of such features as they enter the market and their potential use in the future. However, as discussed in the June 2022 NOPR, DOE is not aware of any data reflecting consumer usage data for network connectivity of portable ACs, nor did interested parties provide any such data. Without these data, DOE is unable to establish a representative test configuration for assessing the energy consumption of network connectivity features for portable ACs. Therefore, due to a lack of data and to harmonize with industry standards, DOE maintains its proposal to test portable ACs with network functions disabled, if possible, unless they cannot be disabled, in which case the portable AC would be tested with network functions in the factory default configuration.

13. Infiltration Air, Duct Heat Transfer, and Case Heat Transfer

The portable AC test procedure accounts for the effects of heat transfer from two sources: (1) infiltration of outdoor air into the conditioned space (*i.e.,* ''infiltration air'') and (2) heat leakage through the duct surface to the conditioned space (*i.e.,* ''duct heat transfer''). In the June 2016 Final Rule, DOE considered the effects of heat transfer through the outer chassis of the portable AC to the conditioned space (*i.e.,* ''case heat transfer'') but did not adopt provisions accounting for case heat transfer.

In the June 2022 NOPR, DOE tentatively determined to continue to exclude case heat transfer from the portable AC test procedure both in appendix CC and appendix CC1 because DOE had no data indicating that the impacts of case heat transfer had become more significant since the time the supporting analysis was conducted. DOE also proposed to maintain the incorporation of the energy impacts of infiltration air and duct heat transfer in the portable AC test procedure. 87 FR 34934, 34955.

In response to the June 2022 NOPR, DOE received the following comments regarding the energy impacts of case heat transfer in appendix CC and appendix CC1.

NEEA and NWPCC supported DOE in retaining the energy impacts of infiltration air and duct heat transfer and further stated support for including case heat transfer impacts. (NEEA and NWPCC, No. 22 at p. 3)

The Joint Commenters encouraged DOE to include a measurement of heat losses through the unit casing to better represent the capacity of portable ACs by adopting the approach DOE proposed in a NOPR published in February 2015 as part of the previous test procedure rulemaking, which required additional instrumentation to measure surface temperature. (Joint Commenters, No. 19 at p. 3)

In the June 2016 Final Rule, DOE concluded that case heat transfer had a minimal impact on the cooling capacity of portable ACs and did not include a measurement of case heat transfer in appendix CC because the test burdens outweighed the benefit of addressing the case heat transfer. 81 FR 35242, 35254–35255. DOE reached this conclusion using test data, gathered in support of the supplemental notice of proposed rulemaking that DOE published for portable AC test procedures on November 27, 2015, that showed the case heat transfer was 1.76 percent of the total portable AC cooling capacity on average. 80 FR 74020, 74030. As noted in the June 2022 NOPR, DOE is not aware of, and has not been provided, any additional data to suggest that case heat transfer is a significant enough form of heat loss that would justify the burden associated with the measurement approach discussed in the previous test procedure rulemaking. 87 FR 34934, 34955. Therefore, DOE maintains its determination to not adopt a measure of case heat transfer in appendix CC and appendix CC1.

C. Representations of Energy Efficiency

Manufacturers, including importers, must use product-specific test procedures in 10 CFR part 430 and sampling and rounding requirements in 10 CFR part 429 to determine the represented values of energy consumption or energy efficiency of a basic model. In the June 2022 NOPR, DOE proposed to include rounding instructions consistent with those in Table 1 of AHAM PAC–1–2022 in 10 CFR 429.62 when representing the energy efficiency of a basic model tested using appendix CC1.

DOE received no comments regarding the proposal to add rounding requirements consistent with AHAM PAC–1–2022 when certifying using appendix CC1 in 10 CFR 429.62. In this final rule, DOE adopts these rounding requirements as proposed in the June 2022 NOPR.

As discussed in section III.B.8.d of this document, in this final rule DOE is adopting a new capacity metric for variable-speed portable ACs in appendix CC, $SACC_{Full}$, which calculates capacity using full compressor speed performance at the lower test condition, to facilitate consumer comparisons between single-speed and variable-speed portable ACs. As noted in that section, the $SACC_{Full}$ metric allows consumers to easily compare the capacities of variable-speed and single-speed portable ACs and maintains compatibility with the existing portable AC standards, which are calculated based on single-speed SACC.

Accordingly, to ensure proper representation of capacity for variable-speed portable ACs, in this final rule DOE is adopting an additional instructional note in 10 CFR 429(a) requiring that $SACC_{Full}$, as determined in accordance with appendix CC, shall

be used as the basis for representations of capacity for variable-speed portable ACs, whereas SACC, as determined in accordance with appendix CC, shall be the basis for representations of capacity for single-speed portable ACs.

D. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The following sections discuss DOE's evaluation of estimated costs associated with the amendments to the test procedure.

a. Appendix CC

DOE is amending appendix CC to account for energy use of variable-speed portable ACs per a modified version of the test method applied in the LG Waiver and Midea Interim Waiver. As discussed in the June 2022 NOPR, the LG Waiver uses manufacturer instructions to achieve a fixed full compressor speed, but DOE is amending appendix CC to require the use of consumer settings and a setpoint of 75 °F to do so. This modification would not require testing at additional conditions or increase the test time per test, as compared to the LG Waiver. As such, DOE has determined that the cost per test under appendix CC as amended by this final rule would be the same as the cost when using the alternate test procedure specified in the LG Waiver.

The amendments adopted for appendix CC in this final rule would require LG and Midea to both re-certify all of their variable-speed portable AC models that are currently subject to testing using the LG Waiver and Midea Interim Waiver, respectively. Midea would need to determine $SACC_{Full}$ by testing with the full compressor speed at the 83 °F test condition, and to re-calculate CEER using the new CF. LG would additionally need to re-test its variable-speed portable ACs subject to the LG Waiver at the full compressor speed at the 95 °F test condition if the full compressor speed measured under appendix CC differs from the full compressor speed measured using the LG Waiver procedure. Therefore, the amendment regarding use of consumer settings to achieve the full compressor speed may alter the measured energy efficiency for LG and Midea's affected portable ACs. Because of the change to the measured energy use, LG and Midea may not be able to rely on data generated under the test procedure waiver that was in effect prior to the amendments in this final rule.

b. Appendix CC1

DOE is adopting a new appendix CC1 consistent with AHAM PAC–1–2022 with modifications. For single-speed portable ACs, AHAM PAC–1–2022 uses the same test conditions as the current appendix CC. DOE is adopting a modification to that approach for single-speed portable ACs, however, to apply a load-based capacity adjustment factor to better represent delivered cooling at the low test condition. DOE is also adopting different CFs for single-duct and dual-duct portable ACs. This approach diverges from AHAM PAC–1–2022, which currently implements a single CF for all single-speed portable AC configurations. These differences in considering single-speed reduced capacity and cycling losses when operating at the low test condition inherently result in different overall capacity and efficiency equations for single-speed portable ACs. However, the cost to perform a single-speed portable AC test is estimated to be the same between the appendix CC1 and AHAM PAC–1–2022 approaches.

For variable-speed portable ACs, AHAM PAC–1–2022 uses the existing temperature conditions while requiring an additional test configuration that measures performance with full compressor speed at the low temperature test condition, as well as low compressor speed at the low temperature test condition. As discussed in this final rule, DOE is adopting the low compressor speed test configuration at the low temperature test condition in appendix CC1, but is not adopting the full compressor speed at the low temperature test condition test due to lack of information regarding representativeness of such a test. Appendix CC1, consistent with AHAM PAC–1–2022, updates the efficiency calculation to improve representativeness, albeit with slight modifications to remove consideration of full compressor operation at the low temperature test condition. The cost to conduct appendix CC1 testing for a variable-speed portable AC is expected to be significantly less than that of AHAM PAC–1–2022, given the reduction in the number of tests from three total cooling mode test runs to two cooling mode tests runs per unit.

DOE is not requiring testing in accordance with appendix CC1 unless and until the compliance date of any future amended energy conservation standards that are based on appendix CC1. At that time, manufacturers would have to re-test all basic models currently certified based on testing under appendix CC and re-certify them based on testing under appendix CC1.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. (*See* section 8(c) of appendix A of 10 CFR part 430 subpart C.) When the industry standard does not meet EPCA statutory criteria for test procedures, DOE will establish a test procedure reflecting modifications to these standards through the rulemaking process.

As discussed, appendices CC and CC1 incorporate by reference ANSI/AHAM PAC–1–2015, AHAM PAC–1–2022, ASHRAE 37–2009, IEC Standard 62301, ASHRAE 41.1–1986, ASHRAE 41.6–1994, and ANSI/AMCA 210, with modifications. The industry standards DOE is incorporating by reference are discussed in further detail in section IV.N of this document.

E. Compliance Date and Waivers

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule, any waivers that had been previously issued and are in effect that pertain to

issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by the waiver granted to LG and the interim waiver granted to Midea.[16]

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563, and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that this rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary) or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered product, including portable ACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

DOE is publishing this final rule in satisfaction of the seven-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

In this final rule, DOE amends 10 CFR 429.4, ''Materials incorporated by reference'' and 10 CFR 429.62, ''Portable air conditioners'' as follows:

(1) Incorporate by reference AHAM PAC–1–2022, ''Portable Air Conditioners'' (''AHAM PAC–1–2022''), which includes an industry-accepted method for testing variable-speed portable ACs, in 10 CFR 429.4; and

(2) Add rounding instructions for the SACC and the new energy efficiency metric, annualized energy efficiency ratio (''AEER''), in 10 CFR 429.62.

In this final rule, DOE also updates 10 CFR 430.2, ''Definitions'' and 10 CFR 430.23, ''Test procedures for the measurement of energy and water consumption'' as follows:

(1) Adds a definition for the term ''combined-duct portable air conditioner'' to 10 CFR 430.2; and

(2) Adds requirements to determine estimated annual operating cost for single-duct and dual-duct variable-speed portable ACs in 10 CFR 430.23.

In this final rule, DOE also amends appendix CC as follows:

(1) Add definitions in section 2 for ''combined-duct,'' ''single-speed,'' ''variable-speed,'' ''full compressor speed (full),'' ''low compressor speed (low),'' ''theoretical comparable single-speed,'' and ''seasonally adjusted cooling capacity, full;''

(2) Divide section 4.1 into two sections, 4.1.1 and 4.1.2, for single-speed and variable-speed portable ACs, respectively, and detail configuration-specific cooling mode testing requirements for variable-speed portable ACs;

(3) Add a requirement in section 4.1.2 that, for variable-speed portable ACs, the full compressor speed at the 95 °F test condition be achieved with user controls, and the low compressor speed at the 83 °F test condition be achieved with manufacturer-provided settings or controls;

(4) Add cycling factors (''CFs'') in section 5.5.1, 0.82 for single-duct units and 0.77 for dual-duct units;

(5) Add a requirement to calculate SACC with full compressor speed at the

[16] Case No. 2018–004 included the LG Waiver; Case No. Case No. 2020–006 included the Midea Interim Waiver.

95 °F test condition and low compressor speed at the 83 °F test condition in sections 5.1 and 5.2, consistent with the LG Waiver and the Midea Interim Waiver, with an additional requirement for variable-speed portable ACs to represent SACC with full compressor speed for both test conditions; and

(6) Add a requirement in section 3.1.2 that if a portable AC has network functions, all network functions must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. If the network functions cannot be disabled by the end-user, or the product's user manual does not provide instructions for disabling network settings, test the unit with the network settings in the factory-default configuration for the duration of the test.

In this final rule, DOE additionally adopts a new appendix CC1, ''10 CFR Appendix CC1 to Subpart B of Part 430, Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners,'' which, compared to appendix CC in this final rule:

(1) Incorporates by reference parts of the updated version of the AHAM standard, AHAM PAC–1–2022, which includes an industry-accepted method for testing portable ACs;

(2) Adopts a new efficiency metric, AEER, in place of the CEER metric, to calculate more representatively the efficiency of both variable-speed and single-speed portable ACs;

(3) Amends the annual operating hours;

(4) Updates the SACC equation for both single-speed and variable-speed portable ACs;

(5) Applies cycling factors (''CFs'') to single-speed portable AC efficiency, 0.82 for single-duct units and 0.77 for dual-duct units; and

Testing in accordance with the new appendix CC1 would not be required until such time as compliance is required with any amended energy conservation standards based on the new appendix CC1.

The Small Business Administration (''SBA'') considers a business entity to be a small business if, together with its affiliates, it employs less than the threshold number of workers specified in 13 CFR part 121. DOE used SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. These size standards and codes are established by the North American Industry Classification System (''NAICS'') and are available at *www.sba.gov/document/support-table-size-standards.* Portable ACs are classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE did not receive any comments that specifically addressed impacts on small businesses or that were provided in response to the initial regulatory flexibility analysis.

DOE used the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'') [17] to create a list of companies in the United States that sell portable ACs covered by this rulemaking. DOE consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import and export logs, and basic model numbers to identify original equipment manufacturers (''OEMs'') of the products covered by this rulemaking. DOE relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports) [18] to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE identified 20 portable AC OEMs. DOE did not identify any domestic OEMs that qualify as a ''small business.''

Given the lack of small entities with a direct compliance burden, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of portable ACs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including portable ACs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for portable ACs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for portable ACs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for portable ACs. DOE has determined that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

[17] California Energy Commission's Modernized Appliance Efficiency Database System. Available at *cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed December 11, 2022).

[18] The Dun & Bradstreet Hoovers subscription login is available online at *app.dnbhoovers.com/* (last accessed December 12, 2022).

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

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

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

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

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

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of

reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for portable ACs adopted in this final rule incorporate testing methods contained in certain sections of the following commercial standards: ANSI/AHAM PAC–1–2015, AHAM PAC–1–2022, ASHRAE 37–2009, ANSI/AMCA 210, ASHRAE 41.1–1986, ANSI/ASHRAE 41.6–1994, and IEC 62301. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

AHAM PAC–1–2022 is an industry-accepted test procedure that measures portable AC performance in cooling mode in a more representative manner than the previous iteration, ANSI/AHAM PAC–1–2015, and is applicable to products sold in North America. AHAM PAC–1–2022 specifies testing conducted in accordance with other industry-accepted test procedures and determines energy efficiency metrics for various portable AC configurations and compressor types (*i.e.,* single-speed and variable-speed). Specifically, the appendix CC1 test procedure codified by this final rule references AHAM PAC–1–2022 for testing portable ACs. AHAM PAC–1–2022 is reasonably available from AHAM (*www.aham.org/AHAM/AuxStore*).

ASHRAE 37–2009 is an industry-accepted test standard referenced by ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022 that defines various uniform methods for measuring performance of air conditioning and heat pump equipment. Although ANSI/AHAM PAC–1–2015 and AHAM PAC–1–2022 reference a number of sections in ASHRAE 37–2009, the appendix CC1 test procedure established in this final rule additionally references one section in ASHRAE 37–2009 that addresses test duration.

ANSI/AMCA 210 is an industry-accepted test standard referenced by ASHRAE 37–2009 that defines methods for measuring the characteristics of air flow.

ASHRAE 41.1–1986 is an industry-accepted test standard referenced by ASHRAE 37–2009 that defines a standard method for measuring temperature.

ASHRAE 41.6–1994 is an industry-accepted test standard referenced by ASHRAE 37–2009 that defines a standard method for measuring moist air properties, including humidity and wet-bulb temperature.

These standards are all reasonably available from ASHRAE (*www.ashrae.org*), except for ANSI/AMCA 210, which is readily available from AMCA International at *www.amca.org*.

IEC 62301 is an industry-accepted test standard that sets a standardized method to measure the standby power of household and similar electrical appliances. IEC 62301 includes details regarding test set-up, test conditions, and stability requirements that are necessary to ensure consistent and repeatable standby mode and off mode test results. IEC 62301 is reasonably available from IEC at *webstore.iec.ch/*.

The following standards are already approved for the sections/appendices where they appear in the regulatory text: ANSI/AHAM PAC–1–2015.

V. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on May 1, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 3, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

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

■ 2. Section 429.4 is amended by adding paragraph (b)(3) to read as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(b) * * *

(3) AHAM PAC–1–2022, *Energy Measurement Test Procedure for Portable Air Conditioners,* Copyright 2022. IBR approved for § 429.62.

* * * * *

■ 3. Section 429.62 is amended by:

■ a. Redesignating paragraphs (a)(3) through (5) as paragraphs (a)(4) through (6);

■ b. Adding new paragraph (a)(3); and

■ c. Revising newly redesignated paragraphs (a)(4) and (5).

The addition and revisions read as follows:

§ 429.62 Portable air conditioners.

* * * * *

(a) * * *

(3) When testing in accordance with appendix CC of subpart B of part 430 of this chapter, the represented value of cooling capacity for a single-speed portable AC shall be seasonally adjusted cooling capacity (''SACC'') and the represented value of cooling capacity for a variable-speed portable AC shall be full-load seasonally adjusted cooling capacity (''$SACC_{Full}$''), as determined in appendix CC to subpart B of part 430 of this chapter. When testing in accordance with appendix CC1 to subpart B of part 430 of this chapter, the represented value of cooling capacity for both single-speed and variable-speed portable ACs shall be SACC, as determined in appendix CC1 to subpart B of part 430 of this chapter.

(4) Where SACC is used for representation, the represented value of SACC of a basic model must be the mean of the SACC for each tested unit of the basic model. Likewise, where $SACC_{Full}$ is used for representation, the represented value of $SACC_{Full}$ of a basic model must be the mean of the $SACC_{Full}$ for each tested unit of the basic model. When using appendix CC to subpart B of part 430 of this chapter, round the mean SACC or $SACC_{Full}$ value to the nearest 50, 100, 200, or 500 Btu/h, depending on the magnitude of the calculated SACC or $SACC_{Full}$, as applicable, in accordance with Table 1 of ANSI/AHAM PAC–1–2015, (incorporated by reference, see § 429.4), ''Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings''. When using appendix CC1 to subpart B of part 430 of this chapter, round SACC to the nearest 50, 100, 200, or 500 Btu/h, depending on the magnitude of the calculated SACC, in accordance with Table 1 of AHAM PAC–1–2022, (incorporated by reference, see § 429.4), ''Multiples for reporting Dual Duct Cooling Capacity, Single Duct Cooling Capacity, Spot Cooling Capacity, Water Cooled Condenser Capacity and Power Input Ratings''.

(5) The represented value of combined energy efficiency ratio or annualized energy efficiency ratio of a basic model must be rounded to the nearest 0.1 Btu/Wh.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by adding, in alphabetical order, the definition for ''Combined-duct portable air conditioner'' to read as follows:

§ 430.2 Definitions.

* * * * *

Combined-duct portable air conditioner means a portable air conditioner for which condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.

* * * * *

■ 5. Amend § 430.3 by:

■ a. Redesignating paragraphs (b)(1) through (5) as (b)(2) through (6) and adding new paragraph (b)(1);

■ b. Revising paragraphs (g)(3) and (5);

■ c. Redesignating paragraphs (g)(11) through (19) as paragraphs (g)(12) through (20);

■ d. Adding new paragraph (g)(11);

■ e. Redesignating paragraph (i)(9) as (i)(10);

■ f. Adding new paragraph (i)(9);

■ g. In paragraph (q)(6), removing the text ''CC, EE'' and adding, in its place, the text ''CC, CC1, EE''; and

■ h. Removing note 2 to paragraph (q).

The revisions and additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(b) * * *

(1) ANSI/AMCA 210–99, *Laboratory Methods of Testing Fans for Aerodynamic Performance Rating,* ANSI-approved December 2, 1999; IBR approved for appendices CC and CC1 to subpart B. (Co-published as ANSI/ASHRAE 51–1999.)

* * * * *

(g) * * *

(3) ANSI/ASHRAE Standard 37–2009 (''ASHRAE 37–2009''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ANSI-approved June 25, 2009; IBR approved for appendices AA, CC, and CC1 to subpart B.

* * * * *

(5) ASHRAE 41.1–1986 (Reaffirmed 2006) (''ASHRAE 41.1–1986''), *Standard Method for Temperature Measurement,* approved February 18, 1987; IBR approved for appendices E, AA, CC, and CC1 to subpart B.

* * * * *

(11) ANSI/ASHRAE Standard 41.6–1994 (RA 2006) (''ASHRAE 41.6–1994''), *Standard Method for Measurement of Moist Air Properties,* ANSI-reaffirmed January 27, 2006; IBR approved for appendices CC and CC1 to subpart B.

* * * * *

(i) * * *

(9) AHAM PAC–1–2022, *Energy Measurement Test Procedure for Portable Air Conditioners,* Copyright 2022; IBR approved for appendix CC1 to subpart B of this part.

* * * * *

■ 6. Section 430.23 is amended by revising paragraph (dd) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(dd) *Portable air conditioners.*

(1) When using appendix CC to this subpart, measure the seasonally adjusted cooling capacity (''SACC'') in British thermal units per hour (Btu/h), and the combined energy efficiency ratio, in British thermal units per watt-hour (Btu/Wh) in accordance with sections 5.2 and 5.4 of appendix CC to this subpart, respectively. When using appendix CC1 to this subpart, measure the SACC in Btu/h, and the combined energy efficiency ratio, in Btu/Wh in accordance with sections 5.2 and 5.4, respectively, of appendix CC1 to this subpart.

(2) When using appendix CC to this subpart, determine the estimated annual

operating cost for portable air conditioners, in dollars per year and rounded to the nearest whole number, by multiplying a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary by the total annual energy consumption (''AEC''), determined as follows:

(i) For dual-duct single-speed portable air conditioners, the sum of AEC_{DD_95} multiplied by 0.2, AEC_{DD_83} multiplied by 0.8, and AEC_T as measured in accordance with section 5.3 of appendix CC to this subpart.

(ii) For single-duct single-speed portable air conditioners, the sum of AEC_{SD} and AEC_T as measured in accordance with section 5.3 of appendix CC to this subpart.

(iii) For dual-duct variable-speed portable air conditioners the overall sum of

(A) The sum of $AEC_{DD\_95\_Full}$ and $AEC_{ia/om}$, multiplied by 0.2, and

(B) The sum of $AEC_{DD\_83\_Low}$ and $AEC_{ia/om}$, multiplied by 0.8, as measured in accordance with section 5.3 of appendix CC to this subpart.

(iv) For single-duct variable-speed portable air conditioners, the overall sum of

(A) The sum of AEC_{SD_Full} and $AEC_{ia/om}$, multiplied by 0.2, and

(B) The sum of AEC_{SD_Low} and $AEC_{ia/om}$, multiplied by 0.8, as measured in accordance with section 5.3 of appendix CC to this subpart.

(3) When using appendix CC1 to this subpart, determine the estimated annual operating cost for portable air conditioners, in dollars per year and rounded to the nearest whole number, by multiplying a representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary by the total AEC. The total AEC is the sum of AEC_{95}, AEC_{83}, AEC_{oc}, and AEC_{ia}, as measured in accordance with section 5.3 of appendix CC1 to this subpart.

* * * * *

■ 7. Appendix CC to subpart B of part 430 is amended by:

■ a. Adding an introductory note;

■ b. Adding section 0;

■ c. Revising sections 2, 3.1.1, 3.1.1.1, 3.1.1.6, 3.1.2, 3.2, 3.2.1, 3.2.2.2, 3.2.3, 4.1, 4.1.1, 4.1.2, and 4.3;

■ d. In sections 3.1.1.3, 3.1.1.4, and 4.3, removing the text ''(incorporated by reference; see § 430.3)'';

■ e. Adding sections 4.1.3 and 4.1.4; and

■ f. Revising sections 5.

The additions and revisions read as follows:

Appendix CC to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standards for portable air conditioners at § 430.32(cc) with which compliance is required as of January 10, 2025. Specifically, before November 13, 2023 representations must be based upon results generated either under this appendix or under this appendix CC as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021. Any representations made on or after November 13, 2023 but before the compliance date of any amended standards for portable ACs must be made based upon results generated using this appendix.

Manufacturers must use the results of testing under appendix CC1 to this subpart to determine compliance with any standards that amend the portable air conditioners standard at § 430.32(cc) with which compliance is required on January 10, 2025 and that use the Annualized Energy Efficiency Ratio (AEER) metric. Any representations related to energy also must be made in accordance with the appendix that applies (*i.e.,* this appendix or appendix CC1) when determining compliance with the relevant standard. Manufacturers may also use appendix CC1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3 the entire standard for ANSI/AHAM PAC–1–2015, ANSI/AMCA 210–99, ASHRAE 37–2009, ASHRAE 41.1–1986, ASHRAE 41.6–1994, and IEC 62301; however, only enumerated provisions of ANSI/AHAM PAC–1–2015, ANSI/AMCA 210–99, ASHRAE 37–2009, and IEC 62301 apply to this appendix CC as follows. Treat ''should'' in IEC 62301 as mandatory. When there is a conflict, the language of this appendix takes precedence over those documents.

0.1 ANSI/AHAM PAC–1–2015

(a) Section 4 ''Definitions,'' as specified in section 3.1.1 of this appendix, except for AHAM's definition for ''Portable Air Conditioner'';

(b) Section 7 ''Tests,'' as specified in sections 3.1.1, 3.1.1.3, 3.1.1.4, 4.1.1, and 4.1.2 of this appendix.

0.2 ANSI/AMCA 210–99 (''ANSI/AMCA 210'')

(a) Figure 12 ''Outlet chamber Setup—Multiple Nozzles in Chamber'' as specified in section 4.1.1 of this appendix;

(b) Figure 12 Notes as specified in section 4.1.1 of this appendix.

0.3 ASHRAE 37–2009

(a) Section 5.4 ''Electrical Instruments,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(b) Section 7.3 ''Indoor and Outdoor Air Enthalpy Methods,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(c) Section 7.6 ''Outdoor Liquid Coil Method,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(d) Section 7.7 ''Airflow Rate Measurement,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(e) Section 8.7 ''Test Procedure for Cooling Capacity Tests,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(f) Section 9.2 ''Test Tolerances,'' as specified in sections 4.1.1 and 4.1.2 of this appendix;

(g) Section 11.1 ''Symbols Used In Equations,'' as specified in sections 4.1.1 and 4.1.2 of this appendix.

0.4 IEC 62301

(a) Paragraph 4.2 ''Test room,'' as specified in section 3.2.4 of this appendix;

(b) Paragraph 4.3.2 ''Supply voltage waveform,'' as specified in section 3.2.2.2 of this appendix;

(c) Paragraph 4.4 ''Power measuring instruments,'' as specified in section 3.2.3 of this appendix;

(d) Paragraph 5.1, ''General,'' Note 1, as specified in section 4.3 of this appendix;

(e) Paragraph 5.2 ''Preparation of product,'' as specified in section 3.2.1 of this appendix;

(f) Paragraph 5.3.2 ''Sampling method,'' as specified in section 4.3 of this appendix;

(g) Annex D, ''Determination of Uncertainty of Measurement,'' as specified in sections 3.2.1, 3.2.2.2, and 3.2.3 of this appendix.

* * * * *

2. Definitions

Combined-duct means the condenser inlet and outlet air streams flow through separate ducts housed in a single duct structure.

Combined energy efficiency ratio means the energy efficiency of a portable air conditioner as measured in accordance with this test procedure in Btu per watt-hours (Btu/Wh) and determined in section 5.4 of this appendix.

Cooling mode means a mode in which a portable air conditioner either has activated the main cooling function according to the thermostat or temperature sensor signal, including activating the refrigeration system, or has activated the fan or blower without activating the refrigeration system.

Dual-duct means drawing some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, potentially drawing additional condenser inlet air from the conditioned space, and discharging the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

Full compressor speed (full) means the compressor speed at which the unit operates at full load test conditions, when using user controls with a unit thermostat setpoint of 75 °F to achieve maximum cooling capacity.

Inactive mode means a standby mode that facilitates the activation of an active mode or off-cycle mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Low compressor speed (low) means the compressor speed specified by the manufacturer, at which the unit operates at

low load test conditions (*i.e.,* Test Condition C and Test Condition E in Table 2 of this appendix, for a dual-duct and single-duct portable air conditioner, respectively), such that the measured cooling capacity at this speed is no less than 50 percent and no greater than 60 percent of the measured cooling capacity with the full compressor speed at full load test conditioners (*i.e.,* Test Condition A and Test Condition C in Table 2 of this appendix, for a dual-duct and single-duct portable air conditioner, respectively).

Off-cycle mode means a mode in which a portable air conditioner:

(a) Has cycled off its main cooling or heating function by thermostat or temperature sensor signal;

(b) May or may not operate its fan or blower; and

(c) Will reactivate the main function according to the thermostat or temperature sensor signal.

Off mode means a mode that may persist for an indefinite time in which a portable air conditioner is connected to a mains power source, and is not providing any active mode, off-cycle mode, or standby mode function. This includes an indicator that only shows the user that the portable air conditioner is in the off position.

Seasonally adjusted cooling capacity means the amount of cooling provided to the indoor conditioned space, measured under the specified ambient conditions, in Btu/h,

Seasonally adjusted cooling capacity, full means the amount of cooling provided to the indoor conditions space, measured under the specified ambient conditions when the unit compressor is operating at full speed at each condition, in Btu/h.

Single-duct means drawing all of the condenser inlet air from the conditioned space without the means of a duct, and discharging the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

Single-speed means incapable of automatically adjusting the compressor speed based on detected conditions.

Standby mode means any mode where a portable air conditioner is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of cooling mode) by remote switch (including remote control), internal sensor, or timer; or

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Theoretical comparable single-speed means a hypothetical single-speed unit that would have the same cooling capacity and electrical power input as the variable-speed unit under test, with no cycling losses considered, when operating with the full compressor speed and at the test conditions in Table 1 of this appendix.

Variable-speed means capable of automatically adjusting the compressor speed based on detected conditions.

* * * * *

3.1 * * *

3.1.1 *Test conduct.* The test apparatus and instructions for testing portable air conditioners in cooling mode and off-cycle mode must conform to the requirements specified in section 4, ''Definitions'' and section 7, ''Tests,'' of ANSI/AHAM PAC–1–2015, except as otherwise specified in this appendix. Measure duct heat transfer and infiltration air heat transfer according to sections 4.1.1 and 4.1.2 of this appendix, respectively.

3.1.1.1 *Duct setup.* Use all ducting components provided by or required by the manufacturer and no others. Ducting components include ducts, connectors for attaching the duct(s) to the test unit, sealing, insulation, and window mounting fixtures. Do not apply additional sealing or insulation. For combined-duct units, the manufacturer must provide the testing facility an adapter that allows for the individual connection of the condenser inlet and outlet airflows to the test facility's airflow measuring apparatuses. Use that adapter to measure the condenser inlet and outlet airflows for any corresponding unit.

* * * * *

3.1.1.6 *Duct temperature measurements.* Install any insulation and sealing provided by the manufacturer. For a dual-duct or single-duct unit, adhere four thermocouples per duct, spaced along the entire length equally, to the outer surface of the duct. Measure the surface temperatures of each duct. For a combined-duct unit, adhere sixteen thermocouples to the outer surface of the duct, spaced evenly around the circumference (four thermocouples, each 90 degrees apart, radially) and down the entire length of the duct (four sets of four thermocouples, evenly spaced along the entire length of the duct), ensuring that the thermocouples are spaced along the entire length equally, on the surface of the combined duct. Place at least one thermocouple preferably adjacent to, but otherwise as close as possible to, the condenser inlet aperture and at least one thermocouple on the duct surface preferably adjacent to, but otherwise as close as possible to, the condenser outlet aperture. Measure the surface temperature of the combined duct at each thermocouple. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured.

3.1.2 *Control settings.* For a single-speed unit, set the controls to the lowest available temperature setpoint for cooling mode, as described in section 4.1.1 of this appendix. For a variable-speed unit, set the thermostat setpoint to 75 °F to achieve the full compressor speed and use the manufacturer instructions to achieve the low compressor speed, as described in section 4.1.2 of this appendix. If the portable air conditioner has a user-adjustable fan speed, select the maximum fan speed setting. If the unit has an automatic louver oscillation feature and there is an option to disable that feature, disable that feature throughout testing. If the unit has adjustable louvers, position the louvers parallel with the air flow to maximize air flow and minimize static pressure loss. If the portable air conditioner has network functions, that an end-user can disable and the product's user manual provides instructions on how to do so, disable all network functions throughout testing. If an end-user cannot disable a network function or the product's user manual does not provide instruction for disabling a network function, test the unit with that network function in the factory default configuration for the duration of the test.

* * * * *

3.2 Standby Mode and Off Mode

3.2.1 *Installation requirements.* For the standby mode and off mode testing, install the portable air conditioner in accordance with Paragraph 5.2 of IEC 62301, referring to Annex D of that standard as necessary. Disregard the provisions regarding batteries and the determination, classification, and testing of relevant modes.

* * * * *

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in, Paragraph 4.3.2 of IEC 62301, referring to Annex D of that standard as necessary.

3.2.3 *Standby mode and off mode wattmeter.* The wattmeter used to measure standby mode and off mode power consumption must meet the requirements specified in Paragraph 4.4 of IEC 62301, using a two-tailed confidence interval and referring to Annex D of that standard as necessary.

4. * * *

4.1 Cooling Mode

Note: For the purposes of this cooling mode test procedure, evaporator inlet air is considered the ''indoor air'' of the conditioned space and condenser inlet air is considered the ''outdoor air'' outside of the conditioned space.

4.1.1 *Single-Speed Cooling Mode Test.* For single-speed portable air conditioners, measure the indoor room cooling capacity and overall power input in cooling mode in accordance with sections 7.1.b and 7.1.c of ANSI/AHAM PAC–1–2015, respectively, including the references to sections 5.4, 7.3, 7.6, 7.7, and 11 of ASHRAE 37–2009. Determine the test duration in accordance with section 8.7 of ASHRAE 37–2009, including the reference to section 9.2 of the same standard, referring to Figure 12 and the Figure 12 Notes of ANSI/AMCA 210 to determine placement of static pressure taps, and including references to ASHRAE 41.1–1986 and ASHRAE 41.6–1994. Disregard the test conditions in Table 3 of ANSI/AHAM PAC–1–2015. Instead, apply the test conditions for single-duct and dual-duct portable air conditioners presented in Table 1 of this appendix. For single-duct units, measure the indoor room cooling capacity, $Capacity_{SD}$, and overall power input in cooling mode, P_{SD}, in accordance with the ambient conditions for test condition 1.C,

presented in Table 1 of this appendix. For dual-duct units, measure the indoor room cooling capacity and overall power input twice, first in accordance with ambient conditions for test condition 1.A ($Capacity_{95}$, P_{95}), and then in accordance with test condition 1.B ($Capacity_{83}$, P_{83}), both presented in Table 1 of this appendix. For the remainder of this test procedure, test combined-duct single-speed portable air conditioners following any instruction for dual-duct single-speed portable air conditioners, unless otherwise specified.

TABLE 1—SINGLE-SPEED EVAPORATOR (INDOOR) AND CONDENSER (OUTDOOR) INLET TEST CONDITIONS

Test condition	Evaporator inlet air, °F (°C)		Condenser inlet air, °F (°C)	
	Dry bulb	Wet bulb	Dry bulb	Wet bulb
1.A	80 (26.7)	67 (19.4)	95 (35.0)	75 (23.9)
1.B	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)
1.C	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)

4.1.2 *Variable-Speed Cooling Mode Test.* For variable-speed portable air conditioners, measure the indoor room cooling capacity and overall power input in cooling mode in accordance with sections 7.1.b and 7.1.c of ANSI/AHAM PAC–1–2015, respectively, including the references to sections 5.4, 7.3, 7.6, 7.7, and 11 of ASHRAE 37–2009, except as detailed below. Determine the test duration in accordance with section 8.7 of ASHRAE 37–2009, including the reference to section 9.2 of the same standard. Disregard the test conditions in Table 3 of ANSI/AHAM PAC–1–2015. Instead, apply the test conditions for single-duct and dual-duct portable air conditioners presented in Table 2 of this appendix. For a single-duct unit, measure the indoor room cooling capacity and overall power input in cooling mode twice, first in accordance with the ambient conditions and compressor speed settings for test condition 2.D ($Capacity_{SD\_Full}$, P_{SD_Full}), and then in accordance with the ambient conditions for test condition 2.E ($Capacity_{SD\_Low}$, P_{SD_Low}), both presented in Table 2 of this appendix. For dual-duct units, measure the indoor room cooling capacity and overall power input three times, first in accordance with ambient conditions for test condition 2.A ($Capacity_{95\_Full}$, P_{95_Full}), second in accordance with the ambient conditions for test condition 2.B ($Capacity_{83\_Full}$, P_{83_Full}), and third in accordance with the ambient conditions for test condition 2.C ($Capacity_{83\_Low}$, P_{83_Low}), each presented in Table 2 of this appendix. For the remainder of this test procedure, test combined-duct variable-speed portable air conditioners following any instruction for dual-duct variable-speed portable air conditioners, unless otherwise specified. For test conditions 2.A, 2.B, and 2.D, achieve the full compressor speed with user controls, as defined in section 2.13 of this appendix. For test conditions 2.C and 2.E, set the required compressor speed in accordance with instructions the manufacturer provided to DOE.

TABLE 2—VARIABLE-SPEED EVAPORATOR (INDOOR) AND CONDENSER (OUTDOOR) INLET TEST CONDITIONS

Test condition	Evaporator inlet air °F (°C)		Condenser inlet air °F (°C)		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
2.A	80 (26.7)	67 (19.4)	95 (35.0)	75 (23.9)	Full.
2.B	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)	Full.
2.C	80 (26.7)	67 (19.4)	83 (28.3)	67.5 (19.7)	Low.
2.D	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)	Full.
2.E	80 (26.7)	67 (19.4)	80 (26.7)	67 (19.4)	Low.

4.1.3. *Duct Heat Transfer*

Throughout the cooling mode test, measure the surface temperature of the condenser exhaust duct and condenser inlet duct, where applicable. Calculate the average temperature at each thermocouple placement location. Then calculate the average surface temperature of each duct. For single-duct and dual-duct units, calculate the average of the four average temperature measurements taken on the duct. For combined-duct units, calculate the average of the sixteen average temperature measurements taken on the duct. Calculate the surface area (A_{duct_j}) of each duct according to:

$$A_{duct\_j} = Cj \times Lj$$

Where:

Cj = the circumference of duct ''j'', including any manufacturer-supplied insulation, measured by wrapping a flexible measuring tape, or equivalent, around the outside of a combined duct, making sure the tape is on the outermost ridges or, alternatively, if the duct has a circular cross-section, by multiplying the outer diameter by 3.14.

Lj = the extended length of duct ''j'' while under test.

j represents the condenser exhaust duct for single-duct units, the condenser exhaust duct and the condenser inlet duct for dual-duct units, and the combined duct for combined-duct units.

Calculate the total heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode at each test condition, as follows:

For single-duct single-speed portable air conditioners:

$$Q_{duct\_SD} = 3 \times A_{duct\_j} \times (T_{duct\_j} - T_{ei})$$

For dual-duct single-speed portable air conditioners:

$$Q_{duct\_DD\_95} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_95\_j} - T_{ei})\}$$
$$Q_{duct\_DD\_83} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_83\_j} - T_{ei})\}$$

For single-duct variable-speed portable air conditioners:

$$Q_{duct\_SD\_Full} = 3 \times A_{duct} \times (T_{duct\_Full\_j} - T_{ei})$$
$$Q_{duct\_SD\_Low} = 3 \times A_{duct} \times (T_{duct\_Low\_j} - T_{ei})$$

For dual-duct variable-speed portable air conditioners:

$$Q_{duct\_DD\_95\_Full} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Full\_95\_j} - T_{ei})\}$$
$$Q_{duct\_DD\_83\_Full} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Full\_83\_j} - T_{ei})\}$$
$$Q_{duct\_DD\_83\_Low} = \Sigma_j\{3 \times A_{duct\_j} \times (T_{duct\_Low\_83\_j} — T_{ei})\}$$

Where:

Q_{duct_SD} = the total heat transferred from the duct to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Condition 1.C.

$Q_{duct\_DD\_95}$ and $Q_{duct\_DD\_83}$ = the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Conditions 1.A and 1.B, respectively.

$Q_{duct\_SD\_Full}$ and $Q_{duct\_SD\_Low}$ = the total heat transferred from the duct to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Conditions 2.D and 2.E, respectively.

$Q_{duct\_DD\_95\_Full}$, $Q_{duct\_DD\_83\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested at Test Condition 2.A, Test Condition 2.B, and Test Condition 2.C, respectively.

3 = empirically-derived convection coefficient in Btu/h per square foot per °F.

A_{duct_j} = surface area of the duct ''j'', as calculated in this section, in square feet.

T_{duct_j} = average surface temperature for duct ''j'' of single-duct single-speed portable air conditioners, in °F, as measured at Test Condition 1.C.

$T_{duct\_95\_j}$ and $T_{duct\_83\_j}$ = average surface temperature for duct ''j'' of dual-duct single-speed portable air conditioners, in °F, as measured at Test Conditions 1.A and 1.B, respectively.

$T_{duct\_Full\_j}$ and $T_{duct\_Low\_j}$ = average surface temperature for duct ''j'' of single-duct variable-speed portable air conditioners, in °F, as measured at Test Conditions 2.D and 2.E, respectively.

$T_{duct\_Full\_95\_j}$, $T_{duct\_Full\_83\_j}$, and $T_{duct\_Low\_83\_j}$ = average surface temperature for duct ''j'' of dual-duct variable-speed portable air conditioners, in °F, as measured at Test Conditions 2.A, 2.B, and 2.C, respectively.

j represents the condenser exhaust duct for single-duct units, the condenser exhaust duct and the condenser inlet duct for dual-duct units, and the combined duct for combined-duct units.

T_{ei} = average evaporator inlet air dry-bulb temperature, as measured in section 4.1 of this appendix, in °F.

4.1.4. *Infiltration Air Heat Transfer.*

Calculate the sample unit's heat contribution from infiltration air into the conditioned space for each cooling mode test as follows:

Calculate the dry air mass flow rate of infiltration air, which affects the sensible and latent components of heat contribution from infiltration air, according to the following equations.

For a single-duct single-speed unit:

$$\dot{m}_{SD} = \frac{V_{co\_SD} \times \rho_{co\_SD}}{\left(1 + \omega_{co\_SD}\right)}$$

For a dual-duct single-speed unit:

$$\dot{m}_{95} = \frac{V_{co\_95} \times \rho_{co\_95}}{\left(1 + \omega_{co\_95}\right)} - \frac{V_{ci\_95} \times \rho_{ci\_95}}{\left(1 + \omega_{ci\_95}\right)}$$

$$\dot{m}_{83} = \frac{V_{co\_83} \times \rho_{co\_83}}{\left(1 + \omega_{co\_83}\right)} - \frac{V_{ci\_83} \times \rho_{ci\_83}}{\left(1 + \omega_{ci\_83}\right)}$$

For a single-duct variable-speed unit:

$$\dot{m}_{SD\_Full} = \frac{V_{co\_SD\_Full} \times \rho_{co\_SD\_Full}}{\left(1 + \omega_{co\_SD\_Full}\right)}$$

$$\dot{m}_{SD\_Low} = \frac{V_{co\_Low} \times \rho_{co\_Low}}{\left(1 + \omega_{co\_Low}\right)}$$

For a dual-duct variable-speed unit:

$$\dot{m}_{95\_Full} = \frac{V_{co\_95\_Full} \times \rho_{co\_95\_Full}}{\left(1 + \omega_{co\_95\_Full}\right)} - \frac{V_{ci\_95\_Full} \times \rho_{ci\_95\_Full}}{\left(1 + \omega_{ci\_95\_Full}\right)}$$

$$\dot{m}_{83\_Full} = \frac{V_{co\_83\_Full} \times \rho_{co\_83\_Full}}{\left(1 + \omega_{co\_83\_Full}\right)} - \frac{V_{ci\_83\_Full} \times \rho_{ci\_83\_Full}}{\left(1 + \omega_{ci\_83\_Full}\right)}$$

$$\dot{m}_{83\_Low} = \frac{V_{co\_83\_Low} \times \rho_{co\_83\_Low}}{\left(1 + \omega_{co\_83\_Low}\right)} - \frac{V_{ci\_83\_Low} \times \rho_{ci\_83\_Low}}{\left(1 + \omega_{ci\_83\_Low}\right)}$$

Where:

$\dot{m}_{SD}$, $\dot{m}_{SD\_Full}$, and $\dot{m}_{SD\_Low}$ = dry air mass flow rate of infiltration air for single-duct portable air conditioners, in pounds per minute (lb/m) when tested at Test Conditions 1.C, 2.D, and 2.E, respectively.

$\dot{m}_{95}$, $\dot{m}_{83}$, $\dot{m}_{95\_Full}$, $\dot{m}_{83\_Full}$, and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for dual-duct portable air conditioners, in lb/m, when tested at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively.

V_{co_SD}, $V_{co\_SD\_Full}$, $V_{co\_SD\_Low}$, V_{co_95}, V_{co_83}, $V_{co\_95\_Full}$, $V_{co\_83\_Full}$, and $V_{co\_83\_Low}$ = average volumetric flow rate of the condenser outlet air, in cubic feet per minute (cfm), as measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

V_{ci_95}, V_{ci_83}, $V_{ci\_95\_Full}$, $V_{ci\_83\_Full}$, and $V_{ci\_83\_Low}$ = average volumetric flow rate of the condenser inlet air, in cfm, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ρ_{co_SD}, $\rho_{co\_SD\_Full}$, $\rho_{co\_SD\_Low}$, ρ_{co_95}, ρ_{co_83}, $\rho_{co\_95\_Full}$, $\rho_{co\_83\_Full}$, and $\rho_{co\_83\_Low}$ = average density of the condenser outlet air, in pounds mass per cubic foot (lb_m/ft^3), as measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ρ_{ci_95}, ρ_{ci_83}, $\rho_{ci\_95\_Full}$, $\rho_{ci\_83\_Full}$, and $\rho_{ci\_83\_Low}$ = average density of the condenser inlet air, in lb_m/ft^3, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ω_{co_SD}, $\omega_{co\_SD\_Full}$, $\omega_{co\_SD\_Low}$, ω_{co_95}, ω_{co_83}, $\omega_{co\_95\_Full}$, $\omega_{co\_83\_Full}$, and $\omega_{co\_83\_Low}$ = average humidity ratio of condenser outlet air, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}), as

measured at Test Conditions 1.C, 2.D, 2.E, 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

ω_{ci_95}, ω_{ci_83}, $\omega_{ci\_95\_Full}$, $\omega_{ci\_83\_Full}$, and $\omega_{ci\_83\_Low}$ = average humidity ratio of condenser inlet air, in lb_w/lb_{da}, as measured at Test Conditions 1.A, 1.B, 2.A, 2.B, and 2.C, respectively, as required in sections 4.1.1 and 4.1.2 of this appendix.

Calculate the sensible component of infiltration air heat contribution according to the following equations.

For single-duct single-speed units:

$$Q_{s\_SD\_95} = \dot{m}_{SD} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$$

$$Q_{s\_SD\_83} = \dot{m}_{SD} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

For dual-duct single-speed units:

$$Q_{s\_DD\_95} = \dot{m}_{95} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$$

$$Q_{s\_DD\_83} = \dot{m}_{83} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

For single-duct variable-speed units:

$$Q_{s\_SD\_95\_Full} = \dot{m}_{SD\_Full} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$$

$$Q_{s\_SD\_83\_Full} = \dot{m}_{SD\_Full} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

$$Q_{s\_SD\_83\_Low} = \dot{m}_{SD\_Low} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

For dual-duct variable-speed units:

$$Q_{s\_DD\_95\_Full} = \dot{m}_{95\_Full} \times 60 \times [c_{p\_da} \times (95 - 80) + (c_{p\_wv} \times (0.0141 \times 95 - 0.0112 \times 80))]$$

$$Q_{s\_DD\_83\_Full} = \dot{m}_{83\_Full} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

$$Q_{s\_DD\_83\_Low} = \dot{m}_{83\_Low} \times 60 \times [(c_{p\_da} \times (83 - 80) + (c_{p\_wv} \times (0.01086 \times 83 - 0.0112 \times 80))]$$

Where:

$Q_{s\_SD\_95}$, $Q_{s\_SD\_83}$, $Q_{s\_DD\_95}$, and $Q_{s\_DD\_83}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration and temperature condition.

$Q_{s\_SD\_95\_Full}$, $Q_{s\_SD\_83\_Full}$, $Q_{s\_SD\_83\_Low}$, $Q_{s\_DD\_95\_Full}$, $Q_{s\_DD\_83\_Full}$, and $Q_{s\_DD\_83\_Low}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$\dot{m}_{SD}$, $\dot{m}_{95}$, and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for single-speed portable air conditioners, in lb/m, as calculated in section 4.1.4 of this appendix.

$\dot{m}_{SD\_95\_Full}$, $\dot{m}_{SD\_83\_Low}$, $\dot{m}_{95\_Full}$ and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for variable-speed portable air conditioners, in lb/m, as calculated in section 4.1.4 of this appendix.

c_{p_da} = specific heat of dry air, 0.24 Btu/(lbm °F).

c_{p_wv} = specific heat of water vapor, 0.444 Btu/(lbm °F).

80 = indoor chamber dry-bulb temperature, in °F.

95 = infiltration air dry-bulb temperature for Test Conditions 1.A and 2.A, in °F.

83 = infiltration air dry-bulb temperature for Test Conditions 1.B, 2.B, and 2.C, in °F.

0.0141 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.A and 2.A, in lb_w/lb_{da}.

0.01086 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.B, 2.B, and 2.C, in lb_w/lb_{da}.

0.0112 = humidity ratio of the indoor chamber air, in lb_w/lb_{da} (ω_{indoor}).

60 = conversion factor from minutes to hours.

Calculate the latent heat contribution of the infiltration air according to the following equations. For a single-duct single-speed unit:

$$Q_{l\_SD\_95} = \dot{m}_{SD} \times 60 \times 1061 \times (0.0141 - 0.0112)$$

$$Q_{l\_SD\_83} = \dot{m}_{SD} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

For a dual-duct single-speed unit:

$$Q_{l\_DD\_95} = \dot{m}_{95} \times 60 \times 1061 \times (0.0141 - 0.0112)$$

$$Q_{l\_DD\_83} = \dot{m}_{83} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

For a single-duct variable-speed unit:

$$Q_{l\_SD\_95\_Full} = \dot{m}_{SD\_Full} \times 60 \times 1061 \times (0.0141 - 0.0112)$$

$$Q_{l\_SD\_83\_Full} = \dot{m}_{SD\_Full} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

$$Q_{l\_SD\_83\_Low} = \dot{m}_{SD\_Low} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

For a dual-duct variable-speed unit:

$$Q_{l\_DD\_95\_Full} = \dot{m}_{95\_Full} \times 60 \times 1061 \times (0.0141 - 0.0112)$$

$$Q_{l\_DD\_83\_Full} = \dot{m}_{83\_Full} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

$$Q_{l\_DD\_83\_Low} = \dot{m}_{83\_Low} \times 60 \times 1061 \times (0.01086 - 0.0112)$$

Where:

$Q_{l\_SD\_95}$, $Q_{l\_SD\_83}$, $Q_{l\_DD\_95}$, and $Q_{l\_DD\_83}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration and temperature condition.

$Q_{l\_SD\_95\_Full}$, $Q_{l\_SD\_83\_Full}$, $Q_{l\_SD\_Low}$, $Q_{l\_DD\_95\_Full}$, $Q_{l\_DD\_83\_Full}$, and $Q_{l\_DD\_83\_Low}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$\dot{m}_{SD}$, $\dot{m}_{95}$, and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for portable air conditioners, in lb/m, when tested at Test Conditions 1.C, 1.A, and 1.B, respectively, as calculated in section 4.1.4 of this appendix.

$\dot{m}_{SD\_Full}$, $\dot{m}_{SD\_Low}$, $\dot{m}_{95\_Full}$, $\dot{m}_{83\_Full}$ and $\dot{m}_{83\_Low}$ = dry air mass flow rate of infiltration air for portable air conditioners, in lb/m, when tested at Test Conditions 2.D, 2.E, 2.A, 2.B, and 2.C, respectively, as calculated in section 4.1.4 of this appendix.

1061 = latent heat of vaporization for water vapor, in Btu/lb_m (H_{fg}).

0.0141 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.A and 2.A, in lb_w/lb_{da}.

0.01086 = humidity ratio of the dry-bulb infiltration air for Test Conditions 1.B, 2.B, and 2.C, in lb_w/lb_{da}.

0.0112 = humidity ratio of the indoor chamber air, in lb_w/lb_{da}.

60 = conversion factor from minutes to hours.

Calculate the total heat contribution of the infiltration air at each test condition by adding the sensible and latent heat according to the following equations.

For a single-duct single-speed unit:

$$Q_{infiltration\_SD\_95} = Q_{s\_SD\_95} + Q_{l\_SD\_95}$$

$$Q_{infiltration\_SD\_83} = Q_{s\_SD\_83} + Q_{l\_SD\_83}$$

For a dual-duct single-speed unit:

$$Q_{infiltration\_DD\_95} = Q_{s\_DD\_95} + Q_{l\_DD\_95}$$

$$Q_{infiltration\_DD\_83} = Q_{s\_DD\_83} + Q_{l\_DD\_83}$$

For a single-duct variable-speed unit:

$$Q_{infiltration\_SD\_95\_Full} = Q_{s\_SD\_95\_Full} + Q_{l\_SD\_95\_Full}$$

$$Q_{infiltration\_SD\_83\_Full} = Q_{s\_SD\_83\_Full} + Q_{l\_SD\_83\_Full}$$

$$Q_{infiltration\_SD\_83\_Low} = Q_{s\_SD\_83\_Low} + Q_{l\_SD\_83\_Low}$$

For a dual-duct variable-speed unit:

$$Q_{infiltration\_DD\_95\_Full} = Q_{s\_DD\_95\_Full} + Q_{l\_DD\_95\_Full}$$

$$Q_{infiltration\_DD\_83\_Full} = Q_{s\_DD\_83\_Full} + Q_{l\_DD\_83\_Full}$$

$$Q_{infiltration\_DD\_83\_Low} = Q_{s\_DD\_83\_Low} + Q_{l\_DD\_83\_Low}$$

Where:

$Q_{infiltration\_SD\_95}$, $Q_{infiltration\_SD\_83}$, $Q_{infiltration\_DD\_95}$, $Q_{infiltration\_DD\_83}$ = total infiltration air heat in cooling mode, in Btu/h, for each duct configuration and temperature condition.

$Q_{infiltration\_SD\_95\_Full}$, $Q_{infiltration\_SD\_83\_Full}$, $Q_{infiltration\_SD\_83\_Low}$, $Q_{infiltration\_DD\_95\_Full}$, $Q_{infiltration\_DD\_83\_Full}$, and $Q_{infiltration\_DD\_83\_Low}$ = total infiltration air heat in cooling mode, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{s\_SD\_95}$, $Q_{s\_SD\_83}$, $Q_{s\_DD\_95}$, and $Q_{s\_DD\_83}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{s\_SD\_95\_Full}$, $Q_{s\_SD\_83\_Full}$, $Q_{s\_SD\_83\_Low}$, $Q_{s\_DD\_95\_Full}$, $Q_{s\_DD\_83\_Full}$, and $Q_{s\_DD\_83\_Low}$ = sensible heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

$Q_{l\_SD\_95}$, $Q_{l\_SD\_83}$, $Q_{l\_DD\_95}$, and $Q_{l\_DD\_83}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, and temperature condition.

$Q_{l\_SD\_95\_Full}$, $Q_{l\_SD\_83\_Full}$, $Q_{l\_SD\_83\_Low}$, $Q_{l\_DD\_95\_Full}$, $Q_{l\_DD\_83\_Full}$, and $Q_{l\_DD\_83\_Low}$ = latent heat added to the room by infiltration air, in Btu/h, for each duct configuration, temperature condition, and compressor speed.

* * * * *

4.3 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring that the unit does not enter any active modes during the test. As discussed in Paragraph 5.1, Note 1 of IEC 62301, allow sufficient time for the unit to reach the lowest power state before proceeding with the test measurement. Follow the test procedure specified in Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.3.1 and 4.3.2 of this appendix. If the standby mode is cyclic and irregular or unstable, collect 10 cycles worth of data.

* * * * *

5. Calculation of Derived Results From Test Measurements

5.1 *Adjusted Cooling Capacity*

5.1.1 *Single-Speed Adjusted Cooling Capacity.* For a single-speed portable air conditioner, calculate the adjusted cooling capacity at each outdoor temperature operating condition, in Btu/h, according to the following equations.

For a single-duct single-speed portable air conditioner unit:

$ACC_{SD\_95\_SS} = Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_SD\_95}$

$ACC_{SD\_83\_SS} = Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_SD\_83}$

For a dual-duct single-speed portable air conditioner unit:

$ACC_{DD\_95\_SS} = Capacity_{95} - Q_{duct\_DD\_95} - Q_{infiltration\_DD\_95}$

$ACC_{DD\_83\_SS} = Capacity_{83} - Q_{duct\_DD\_83} - Q_{infiltration\_DD\_83}$

$Capacity_{SD}$, $Capacity_{95}$, and $Capacity_{83}$ = cooling capacity for each duct configuration or temperature condition measured in section 4.1.1 of this appendix.

Q_{duct_SD}, $Q_{duct\_DD\_95}$, and $Q_{duct\_DD\_83}$ = duct heat transfer for each duct configuration or temperature condition while operating in cooling mode, calculated in section 4.1.3 of this appendix.

$Q_{infiltration\_SD\_95}$, $Q_{infiltration\_SD\_83}$, $Q_{infiltration\_DD\_95}$, $Q_{infiltration\_DD\_83}$ = total infiltration air heat transfer in cooling mode for each duct configuration and temperature condition, calculated in section 4.1.4 of this appendix.

5.1.2 *Variable-Speed Adjusted Cooling Capacity.* For variable-speed portable air conditioners, calculate the adjusted cooling capacity at each outdoor temperature operating condition, in Btu/h, according to the following equations:

For a single-duct variable-speed portable air conditioner unit:

$ACC_{SD\_95} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{infiltration\_SD\_95\_Full}$

$ACC_{SD\_83\_Full} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{infiltration\_SD\_83\_Full}$

$ACC_{SD\_83\_Low} = Capacity_{SD\_Low} - Q_{duct\_SD\_Low} - Q_{infiltration\_SD\_83\_Low}$

For a dual-duct variable-speed portable air conditioner unit:

$ACC_{DD\_95} = Capacity_{DD\_95\_Full} - Q_{duct\_DD\_95\_Full} - Q_{infiltration\_DD\_95\_Full}$

$ACC_{DD\_83\_Full} = Capacity_{DD\_83\_Full} - Q_{duct\_DD\_83\_Full} - Q_{infiltration\_DD\_83\_Full}$

$ACC_{DD\_83\_Low} = Capacity_{DD\_83\_Low} - Q_{duct\_DD\_83\_Low} - Q_{infiltration\_DD\_83\_Low}$

Where:

$Capacity_{SD\_Full}$, $Capacity_{SD\_Low}$, $Capacity_{DD\_95\_Full}$, $Capacity_{DD\_83\_Full}$, and $Capacity_{DD\_83\_Low}$ = cooling capacity in Btu/h for each duct configuration, temperature condition (where applicable), and compressor speed, as measured in section 4.1.2 of this appendix.

$Q_{duct\_SD\_Full}$, $Q_{duct\_SD\_Low}$, $Q_{duct\_DD\_95\_Full}$, $Q_{duct\_DD\_83\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = combined duct heat transfer for each duct configuration, temperature condition (where applicable), and compressor speed, as calculated in section 4.1.3 of this appendix.

$Q_{infiltration\_SD\_95\_Full}$, $Q_{infiltration\_SD\_83\_Full}$, $Q_{infiltration\_SD\_83\_Low}$, $Q_{infiltration\_DD\_95\_Full}$, $Q_{infiltration\_DD\_83\_Full}$, and $Q_{infiltration\_DD\_83\_Low}$ = total infiltration air heat transfer in cooling mode for each duct configuration, temperature condition, and compressor speed, as calculated in section 4.1.4 of this appendix.

5.2 *Seasonally Adjusted Cooling Capacity*

5.2.1 Calculate the unit's seasonally adjusted cooling capacity, SACC, in Btu/h, according to the following equations:

For a single-speed portable air conditioner unit:

$SACC_{SD} = ACC_{SD\_95\_SS} \times 0.2 + ACC_{SD\_83\_SS} \times 0.8$

$SACC_{DD} = ACC_{DD\_95\_SS} \times 0.2 + ACC_{SD\_83\_SS} \times 0.8$

For a variable-speed portable air conditioner unit:

$SACC_{SD} = ACC_{SD\_95} \times 0.2 + ACC_{SD\_83\_Low} \times 0.8$

$SACC_{DD} = ACC_{DD\_95} \times 0.2 + ACC_{DD\_83\_Low} \times 0.8$

Where:

$ACC_{SD\_95\_SS}$, $ACC_{SD\_83\_SS}$, $ACC_{DD\_95\_SS}$, and $ACC_{DD\_83\_SS}$ = adjusted cooling capacity for single-speed portable air conditioners for each duct configuration and temperature condition, in Btu/h, calculated in section 5.1.1 of this appendix.

ACC_{SD_95}, $ACC_{SD\_83\_Low}$, ACC_{DD_95}, and $ACC_{DD\_83\_Low}$ = adjusted cooling capacity for variable-speed portable air conditioners for each duct configuration, temperature condition, and compressor speed, in Btu/h, calculated in section 5.1.2 of this appendix.

0.2 = weighting factor for the 95 °F test condition.

0.8 = weighting factor for the 83 °F test condition.

5.2.2 For variable-speed portable ACs determine a Full-Load Seasonally Adjusted Cooling Capacity ($SACC_{Full\_SD}$ for single-speed units and $SACC_{Full\_DD}$ for dual-duct units) using the following formulas:

$SACC_{Full\_SD} = ACC_{SD\_95} \times 0.2 + ACC_{SD\_83\_Full} \times 0.8$

$SACC_{Full\_DD} = ACC_{DD\_95} \times 0.2 + ACC_{DD\_83\_Full} \times 0.8$

ACC_{SD_95}, $ACC_{SD\_83\_Full}$, ACC_{DD_95}, and $ACC_{DD\_83\_Full}$ = adjusted cooling capacity for variable-speed portable air conditioners for each duct configuration, temperature condition, and compressor speed (where applicable), in Btu/h, calculated in section 5.1.2 of this appendix.

0.2 = weighting factor for the 95 °F test condition.

0.8 = weighting factor for the 83 °F test condition.

5.3 *Annual Energy Consumption.* Calculate the sample unit's annual energy consumption in each operating mode according to the equation below. For each operating mode, use the following annual hours of operation and equation:

Type of portable air conditioner	Operating mode	Subscript	Annual operating hours
Variable speed (single- or dual-duct)	Cooling Mode: Test Conditions 2.A, 2.B, 2.C, 2.D, and 2.E [1].	DD_95_Full, DD_83_Full, DD_83_Low, SD_Full, and SD_Low.	750
Single speed (single- or dual-duct)	Cooling Mode: Test Conditions 1.A, 1.B, and 1C [1].	DD_95, DD_83, and SD	750
all	Off-Cycle	oc	880
all	Inactive or Off	ia or om	1,355

[1] These operating mode hours are for the purposes of calculating annual energy consumption under different ambient conditions and are not a division of the total cooling mode operating hours. The total cooling mode operating hours are 750 hours.

$AEC_m = P_m \times t_m \times 0.001$

Where:

AEC_m = annual energy consumption in the operating mode, in kWh/year.

m represents the operating mode as shown in the table above with each operating mode's respective subscript.

P_m = average power in the operating mode, in watts, as determined in sections 4.1.1 and 4.1.2.

t_m = number of annual operating time in each operating mode, in hours.

0.001 kWh/Wh = conversion factor from watt-hours to kilowatt-hours.

Calculate the sample unit's total annual energy consumption in off-cycle mode and inactive or off mode as follows:

$$AEC_T = \sum_{ncm} AEC_{ncm}$$

Where:

AEC_T = total annual energy consumption attributed to off-cycle mode and inactive or off mode, in kWh/year;

AEC_m = total annual energy consumption in the operating mode, in kWh/year.

ncm represents the following two non-cooling operating modes: off-cycle mode and inactive or off mode.

5.4 Combined Energy Efficiency Ratio

5.4.1 *Combined Energy Efficiency Ratio for Single-Speed Portable Air Conditioners.*

Using the annual operating hours established in section 5.3 of this appendix, calculate the combined energy efficiency ratio, CEER, in Btu/Wh, for single-speed portable air conditioners according to the following equation, as applicable:

$$CEER_{SD} = \left[\frac{\left(ACC_{SD\_95\_SS} \times 0.2 + ACC_{SD\_83\_SS} \times 0.8\right)}{\left(\frac{AEC_{SD} + AEC_T}{0.750}\right)}\right]$$

$$CEER_{DD} = \left[\frac{ACC_{DD\_95\_SS}}{\left(\frac{AEC_{DD\_95} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS}}{\left(\frac{AEC_{DD\_83} + AEC_T}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ = combined energy efficiency ratio for a single-duct unit and dual-duct unit, respectively, in Btu/Wh.

$ACC_{SD\_95\_SS}$, $ACC_{SD\_83\_SS}$, $ACC_{DD\_95\_SS}$, $ACC_{DD\_83\_SS}$ = adjusted cooling capacity for each duct configuration and temperature condition, in Btu/h, calculated in section 5.1 of this appendix.

AEC_{SD}, AEC_{DD_95} and AEC_{DD_83} = annual energy consumption in cooling mode for each duct configuration and temperature condition, in kWh/year, calculated in section 5.3 of this appendix.

AEC_T = total annual energy consumption attributed to all modes except cooling, in kWh/year, calculated in section 5.3 of this appendix.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

0.2 = weighting factor for the 95 °F dry-bulb outdoor condition test.

0.8 = weighting factor for the 83 °F dry-bulb outdoor condition test.

5.4.2 *Unadjusted Combined Energy Efficiency Ratio for Variable-Speed Portable Air Conditioners.*

For a variable-speed portable air conditioner, calculate the unit's unadjusted combined energy efficiency ratio, $CEER_{UA}$, in Btu/Wh, as follows:

For single-duct variable-speed portable air conditioners:

$$CEER_{SD\_UA} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_Low}}{\left(\frac{AEC_{SD\_Low} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.8$$

For dual-duct variable-speed portable air conditioners:

$$CEER_{DD\_UA} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_Low}}{\left(\frac{AEC_{DD\_83\_Low} + AEC_{ia/om}}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD\_UA}$, and $CEER_{DD\_UA}$ = unadjusted combined energy efficiency ratio for a single-duct and dual-duct sample unit, in Btu/Wh, respectively.

ACC_{SD_95}, $ACC_{SD\_83\_Low}$, ACC_{DD_95}, and ACC_{DD_83} = adjusted cooling capacity for each duct configuration, temperature condition, and compressor speed, as calculated in section 5.1.2 of this appendix, in Btu/h.

AEC_{SD_Full}, AEC_{SD_Low}, $AEC_{DD\_95\_Full}$, and $AEC_{DD\_83\_Low}$ = annual energy consumption for each duct configuration, temperature condition, and compressor speed in cooling mode operation, as calculated in section 5.3 of this appendix, in kWh/year.

$AEC_{ia/om}$ = annual energy consumption attributed to inactive or off mode, in kWh/year, calculated in section 5.3 of this appendix.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

0.2 = weighting factor for the 95 °F dry-bulb outdoor temperature operating condition.

0.8 = weighting factor for the 83 °F dry-bulb outdoor temperature operating condition.

5.5 *Adjustment of the Combined Energy Efficiency Ratio.* Adjust the sample unit's unadjusted combined energy efficiency ratio as follows.

5.5.1 *Theoretical Comparable Single-Speed Portable Air Conditioner Cooling Capacity and Power at the Lower Outdoor Temperature Operating Condition.* Calculate the cooling capacity without and with cycling losses, in British thermal units per hour (Btu/h), and electrical power input, in watts, for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at an 83 °F outdoor dry-bulb outdoor temperature operating condition according to the following equations:

For a single-duct theoretical comparable single speed portable air conditioner:

$Capacity_{SD\_83\_SS} = Capacity_{SD\_Full}$

$Capacity_{SD\_83\_SS\_CF} = Capacity_{SD\_Full} \times 0.82$

$P_{SD\_83\_SS} = P_{SD\_Full}$

For a dual-duct theoretical comparable single speed portable air conditioner:

$Capacity_{DD\_83\_SS} = Capacity_{83\_Full}$

$Capacity_{DD\_83\_SS\_CF} = Capacity_{83\_Full} \times 0.77$

$P_{DD\_83\_SS} = P_{83\_Full}$

Where:

$Capacity_{SD\_83\_SS}$ and $Capacity_{DD\_83\_SS}$ = cooling capacity of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Capacity_{SD\_83\_SS\_CF}$ and $Capacity_{DD\_83\_SS\_CF}$ = cooling capacity of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner with cycling losses, in Btu/h, calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively).

$Capacity_{SD\_Full}$ and $Capacity_{83\_Full}$ = cooling capacity of the sample unit, measured in section 4.1.2 of this appendix at Test Conditions 2.D and 2.B, in Btu/h.

$P_{SD\_83\_SS}$ and $P_{DD\_83\_SS}$ = power input of a single-duct and dual-duct theoretical comparable single-speed portable air conditioner calculated for the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in watts.

P_{SD_Full} and P_{83_Full} = electrical power input of the sample unit, measured in section 4.1.2 of this appendix at Test Conditions 2.D and 2.B, in watts.

0.82 = empirically-derived cycling factor for the 83 °F dry-bulb outdoor temperature operating condition for single-duct units.

0.77 = empirically-derived cycling factor for the 83 °F dry-bulb outdoor temperature operating condition for dual-duct units.

5.5.2 *Duct Heat Transfer for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the duct heat transfer to the conditioned space for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition as follows:

For a single-duct theoretical comparable single-speed portable air conditioner:

$Q_{duct\_SD\_83\_SS} = Q_{duct\_SD\_Full}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$Q_{duct\_DD\_83\_SS} = Q_{duct\_DD\_83\_Full}$

Where:

$Q_{duct\_SD\_83\_SS}$ and $Q_{duct\_DD\_83\_SS}$ = total heat transferred from the condenser exhaust duct to the indoor conditioned space in cooling mode, for single-duct and dual-duct theoretical comparable single-speed portable air conditioners, respectively, at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Q_{duct\_SD\_Full}$ and $Q_{duct\_DD\_83\_Full}$ = the total heat transferred from the duct to the indoor conditioned space in cooling mode, when tested at Test Conditions 2.D and 2.B, respectively, as calculated in section 4.1.3 of this appendix, in Btu/h.

5.5.3 *Infiltration Air Heat Transfer for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the total heat contribution from infiltration air for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, as follows:

For a single-duct theoretical comparable single-speed portable air conditioner:

$Q_{infiltration\_SD\_83\_SS} = Q_{infiltration\_SD\_83\_Full}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$Q_{infiltration\_DD\_83\_SS} = Q_{infiltration\_DD\_83\_Full}$

Where:

$Q_{infiltration\_SD\_83\_SS}$ and $Q_{infiltration\_DD\_83\_SS}$ = total infiltration air heat in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in Btu/h.

$Q_{infiltration\_SD\_83\_Full}$ and $Q_{infiltration\_DD\_83\_Full}$ = total infiltration air heat transfer of the sample unit in cooling mode for each duct configuration, temperature condition, and compressor speed, as calculated in section 4.1.4 of this appendix, in Btu/h.

5.5.4 *Adjusted Cooling Capacity for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the adjusted cooling capacity without and with cycling losses for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, in Btu/h, according to the following equations:

For a single-duct theoretical comparable single-speed portable air conditioner:

$ACC_{SD\_83\_SS} = Capacity_{SD\_83\_SS} - Q_{duct\_SD\_83\_SS} - Q_{infiltration\_SD\_83\_SS}$

$ACC_{SD\_83\_SS\_CF} = Capacity_{SD\_83\_SS\_CF} - Q_{duct\_SD\_83\_SS} - Q_{infiltration\_SD\_83\_SS}$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$ACC_{DD\_\_83\_SS} = Capacity_{83\_SS} - Q_{duct\_DD\_83\_SS} - Q_{infiltration\_DD\_83\_SS}$

$ACC_{DD\_83\_SS\_CF} = Capacity_{DD\_83\_SS\_CF} - Q_{duct\_DD\_83\_SS} - Q_{infiltration\_DD\_83\_SS}$

Where:

$ACC_{SD\_83\_SS}$, $ACC_{SD\_83\_SS\_CF}$, $ACC_{DD\_83\_SS}$, and $ACC_{DD\_83\_SS\_CF}$ = adjusted cooling capacity for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively) without and with cycling losses, respectively, in Btu/h.

$Capacity_{SD\_83\_SS}$ and $Capacity_{SD\_83\_SS\_CF}$ = cooling capacity of a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.1 of this appendix, in Btu/h.

$Capacity_{DD\_83\_SS}$ and $Capacity_{DD\_83\_SS\_CF}$ = cooling capacity of a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.1 of this appendix, in Btu/h.

$Q_{duct\_SD\_83\_SS}$ and $Q_{duct\_DD\_83\_SS}$ = total heat transferred from the ducts to the indoor conditioned space in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.2 of this appendix, in Btu/h.

$Q_{infiltration\_SD\_83\_SS}$ and $Q_{infiltration\_DD\_83\_SS}$ = total infiltration air heat in cooling mode for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, at Test Conditions 2.E and 2.B (the 83 °F dry-bulb outdoor temperature operating condition), respectively, calculated in section 5.5.3 of this appendix, in Btu/h.

5.5.5 *Annual Energy Consumption in Cooling Mode for a Theoretical Comparable Single-Speed Portable Air Conditioner at the Lower Outdoor Temperature Operating Condition.* Calculate the annual energy consumption in cooling mode for a single-duct or dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition, in kWh/year, according to the following equations:

For a single-duct theoretical comparable single-speed portable air conditioner:

$AEC_{SD\_83\_SS} = P_{SD\_83\_SS} \times 0.750$

For a dual-duct theoretical comparable single-speed portable air conditioner:

$AEC_{DD\_83\_SS} = P_{DD\_83\_SS} \times 0.750$

Where:

$AEC_{SD\_83\_SS}$ and $AEC_{DD\_83\_SS}$ = annual energy consumption for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, in cooling mode at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), in kWh/year.

$P_{SD\_83\_SS}$ and $P_{DD\_83\_SS}$ = electrical power input for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively) as calculated in section 5.5.1 of this appendix, in watts.

0.750 = number of cooling mode hours per year, 750, multiplied by the conversion factor for watt-hours to kilowatt-hours, 0.001 kWh/Wh.

5.5.6 *Combined Energy Efficiency Ratio for a Theoretical Comparable Single-Speed Portable Air Conditioner.* Calculate the combined energy efficiency ratios for a theoretical comparable single-speed portable air conditioner without cycling losses, $CEER_{SD\_SS}$ and $CEER_{DD\_SS}$, and with cycling losses, $CEER_{SD\_SS\_CF}$ and $CEER_{DD\_SS\_CF}$, in

Btu/Wh, according to the following equations:

For a single-duct portable air conditioner:

$$CEER_{SD\_SS} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_SS}}{\left(\frac{AEC_{SD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

$$CEER_{SD\_SS\_CF} = \left[\frac{ACC_{SD\_95}}{\left(\frac{AEC_{SD\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{SD\_83\_SS\_CF}}{\left(\frac{AEC_{SD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

For a dual-duct portable air conditioner:

$$CEER_{DD\_SS} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS}}{\left(\frac{AEC_{DD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

$$CEER_{DD\_SS\_CF} = \left[\frac{ACC_{DD\_95}}{\left(\frac{AEC_{DD\_95\_Full} + AEC_T}{0.750}\right)}\right] \times 0.2 + \left[\frac{ACC_{DD\_83\_SS\_CF}}{\left(\frac{AEC_{DD\_83\_SS} + AEC_T}{0.750}\right)}\right] \times 0.8$$

Where:

$CEER_{SD\_SS}$ and $CEER_{SD\_CF\_SS}$ = combined energy efficiency ratio for a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, in Btu/Wh.

$CEER_{DD\_SS}$ and $CEER_{DD\_CF\_SS}$ = combined energy efficiency ratio for a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses, respectively, in Btu/Wh.

ACC_{SD_95} and ACC_{DD_95} = adjusted cooling capacity of the sample unit, as calculated in section 5.1.2 of this appendix, when tested at Test Conditions 2.D and 2.A, respectively, in Btu/h.

$ACC_{SD\_83\_SS}$ and $ACC_{SD\_83\_SS\_CF}$ = adjusted cooling capacity for a single-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E) without and with cycling losses, respectively, as calculated in section 5.5.4 of this appendix, in Btu/h.

$ACC_{DD\_83\_SS}$ and $ACC_{DD\_83\_SS\_CF}$ = adjusted cooling capacity for a dual-duct theoretical comparable single-speed portable air conditioner at the 83 °F dry-bulb outdoor temperature operating condition (Test Condition 2.B) without and with cycling losses, respectively, as calculated in section 5.5.4 of this appendix, in Btu/h.

AEC_{SD_Full} = annual energy consumption of the single-duct sample unit, as calculated in section 5.4.2.1 of this appendix, in kWh/year.

$AEC_{DD\_95\_Full}$ = annual energy consumption for the dual-duct sample unit, as calculated in section 5.4.2.1 of this appendix, in kWh/year.

$AEC_{SD\_83\_SS}$ and $AEC_{DD\_83\_SS}$ = annual energy consumption for a single-duct and dual-duct theoretical comparable single-speed portable air conditioner, respectively, in cooling mode at the 83 °F dry-bulb outdoor temperature operating condition (Test Conditions 2.E and 2.B, respectively), calculated in section 5.5.5 of this appendix, in kWh/year.

AEC_T = total annual energy consumption attributed to all operating modes except cooling for the sample unit, calculated in section 5.3 of this appendix, in kWh/year.

0.750 as defined previously in this section.

0.2 = weighting factor for the 95 °F dry-bulb outdoor temperature operating condition.

0.8 = weighting factor for the 83 °F dry-bulb outdoor temperature operating condition.

5.5.7 *Performance Adjustment Factor.* Calculate the sample unit's performance adjustment factor, F_p, as follows:

For a single-duct unit:

$$F_{p\_SD} = \frac{\left(CEER_{SD\_SS} - CEER_{SD\_SS\_CF}\right)}{CEER_{SD\_SS\_CF}}$$

For a dual-duct unit:

$$F_{p\_DD} = \frac{\left(CEER_{DD\_SS} - CEER_{DD\_SS\_CF}\right)}{CEER_{DD\_SS\_CF}}$$

Where:

$CEER_{SD\_SS}$ and $CEER_{SD\_SS\_CF}$ = combined energy efficiency ratio for a single-duct theoretical comparable single-speed portable air conditioner without and with cycling losses considered, respectively, calculated in section 5.5.6 of this appendix, in Btu/Wh.

$CEER_{DD\_SS}$ and $CEER_{DD\_SS\_CF}$ = combined energy efficiency ratio for a dual-duct theoretical comparable single-speed portable air conditioner without and with cycling losses considered, respectively, calculated in section 5.5.6 of this appendix, in Btu/Wh.

5.5.8 *Single-Duct and Dual-Duct Variable-Speed Portable Air Conditioner Combined Energy Efficiency Ratio.* Calculate the sample unit's final combined energy efficiency ratio, CEER, in Btu/Wh, as follows:

For a single-duct portable air conditioner:

$$CEER_{SD} = CEER_{SD\_UA} \times (1 + F_{p\_SD})$$

For a dual-duct portable air conditioner:

$$CEER_{DD} = CEER_{DD\_UA} \times (1 + F_{p\_DD})$$

Where:

$CEER_{SD}$ and $CEER_{DD}$ = combined energy efficiency ratio for a single-duct and dual-duct sample unit, in Btu/Wh, respectively.

$CEER_{SD\_UA}$ and $CEER_{DD\_UA}$ = unadjusted combined energy efficiency ratio for a single-duct and dual-duct sample unit, respectively, calculated in section 5.4.2.1 of this appendix, in Btu/Wh.

F_{p_SD} and F_{p_DD} = single-duct and dual-duct sample unit's performance adjustment factor, respectively, calculated in section 5.5.7 of this appendix.

■ 8. Appendix CC1 to subpart B of part 430 is added to read as follows:

Appendix CC1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

Note: Manufacturers must use the results of testing under this appendix CC1 to determine compliance with any standards that amend the portable air conditioners standard at § 430.32(cc) with which compliance is required on January 10, 2025 and that use the Annualized Energy Efficiency Ratio (AEER) metric. Any representation related to energy also must be made in accordance with the appendix that applies (*i.e.,* appendix CC to this subpart or this appendix CC1). Manufacturers may also use this appendix CC1 to certify compliance with any amended standards before the compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3, the entire standard for AHAM PAC–1–2022, ANSI/AMCA 210–99, ASHRAE 37–2009, ASHRAE 41.1–1986, ASHRAE 41.6–1994, and IEC 62301; however, only enumerated provisions of AHAM PAC–1–2022, ANSI/AMCA 210–99, ASHRAE 37–2009, and IEC 62301 are applicable to this appendix CC1, as follows. Treat ''should'' in IEC 62301 as mandatory. When there is a conflict, the language of this appendix takes precedence over those documents.

0.1 AHAM PAC–1–2022

(a) Section 4 ''Definitions,'' as specified in section 2 of this appendix;

(b) Section 7 ''Test Setup,'' as specified in sections 3 and 4 of this appendix;

(c) Section 8 ''Test Conduct,'' as specified in section 4 of this appendix;

(d) Section 8.1 ''Cooling Mode,'' as specified in sections 5.1 and 5.3 of this appendix;

(e) Section 9 ''Calculation of Derived Results from Test Measurements,'' as specified in section 5 of this appendix;

(f) Section 9.1 ''Duct Heat Transfer,'' as specified in section 5.1 of this appendix;

(g) Section 9.2 ''Infiltration Air Heat Transfer,'' as specified in section 5.1 of this appendix.

0.2 ANSI/AMCA 210–99 (''ANSI/AMCA 210'')

(a) Figure 12, ''Outlet chamber Setup—Multiple Nozzles in Chamber,'' as specified in section 4 of this appendix;

(b) Figure 12 Notes, as specified in section 4 of this appendix.

0.3 ASHRAE 37–2009

(a) Section 5.1 ''Temperature Measuring Instruments,'' as specified in section 3 of this appendix;

(b) Section 5.3 ''Air Differential Pressure and Airflow Measurements,'' as specified in section 3 of this appendix;

(c) Section 5.4 ''Electrical Instruments,'' as specified in section 4 of this appendix;

(d) Section 6.2 ''Nozzle Airflow Measuring Apparatus,'' as specified in section 4 of this appendix;

(e) Section 6.3 ''Nozzles,'' as specified in section 4 of this appendix;

(f) Section 7.3 ''Indoor and Outdoor Air Enthalpy Methods,'' as specified in section 4 of this appendix;

(g) Section 7.7 ''Airflow Rate Measurement,'' as specified in section 4 of this appendix;

(h) Section 8.7 ''Test Procedure for Cooling Capacity Tests,'' as specified in section 4 of this appendix;

(i) Section 9 ''Data to be Recorded,'' as specified in section 4 of this appendix;

(j) Section 10 ''Test Results,'' as specified in section 4 of this appendix;

(k) Section 11.1 ''Symbols Used In Equations,'' as specified in section 4 of this appendix.

0.4 IEC 62301

(a) Paragraph 4.2 ''Test room'' as specified in section 3 of this appendix;

(b) Paragraph 4.3.2 ''Supply voltage waveform,'' as specified in section 3 of this appendix;

(c) Paragraph 4.4 ''Power measuring instruments,'' as specified in section 3 of this appendix;

(d) Paragraph 5.1, ''General,'' Note 1 as specified in section 4 of this appendix;

(e)Paragraph 5.2 ''Preparation of product,'' as specified in section 3 of this appendix;

(f) Paragraph 5.3.2 ''Sampling method,'' as specified in section 4 of this appendix;

(g) Annex D, ''Determination of Uncertainty of Measurement,'' as specified in section 3 of this appendix.

1. Scope

Establishes test requirements to measure the energy performance of single-duct and dual-duct, and single-speed and variable-speed portable air conditioners in accordance with AHAM PAC–1–2022, unless otherwise specified.

2. Definitions

Definitions for industry standards, terms, modes, calculations, etc. are in accordance with AHAM PAC–1–2022, section 4, with the following added definition:

Annualized Energy Efficiency Ratio means the energy efficiency of a portable air conditioner as measured in accordance with this test procedure as the total annual cooling delivered divided by the total annual energy consumption in per watt-hours (Btu/Wh) and determined in section 5.4.

3. Test Apparatus and General Instructions

Follow requirements and instructions for test conduct and test setup in accordance with AHAM PAC–1–2022, section 7, excluding section 7.1.3, including references to ASHRAE 37–2009, sections 5.1 and 5.3, and IEC 62301 sections 4.2, 4.3.2, 4.4, and 5.2, and Annex D. If the portable air conditioner has network functions, disable all network functions throughout testing if possible. If an end-user cannot disable a network function or the product's user manual does not provide instruction for disabling a network function, test the unit with that network function in the factory default configuration for the duration of the test.

3.1 *Duct temperature measurements.* Install any insulation and sealing provided by the manufacturer. For a dual-duct or single-duct unit, adhere four thermocouples per duct, spaced along the entire length equally, to the outer surface of the duct. Measure the surface temperatures of each duct. For a combined-duct unit, adhere sixteen thermocouples to the outer surface of the duct, spaced evenly around the circumference (four thermocouples, each 90 degrees apart, radially) and down the entire length of the duct (four sets of four thermocouples, evenly spaced along the entire length of the duct), ensuring that the thermocouples are spaced along the entire length equally, on the surface of the combined duct. Place at least one thermocouple preferably adjacent to, but otherwise as close as possible to, the condenser inlet aperture and at least one thermocouple on the duct surface preferably adjacent to, but otherwise as close as possible to, the condenser outlet aperture. Measure the surface temperature of the combined duct at each thermocouple. Temperature measurements must have an error no greater than ±0.5 °F over the range being measured.

4. Test Measurement

Follow requirements for test conduct in active and inactive modes of operation in accordance with AHAM PAC–1–2022, section 8, except section 8.1.b, including references to sections 5.4, 6.2, 6.3, 7.3, 7.7, 8.7, 9, 10, and 11 of ASHRAE 37–2009, referring to Figure 12 and Figure 12 Notes of ANSI/AMCA 210 to determine placement of

static pressure taps, and including references to ASHRAE 41.1–1986 and ASHRAE 41.6–1994. When conducting cooling mode testing for a variable-speed dual-duct portable air conditioner, use test configurations 1C and 1E in Table 2 of AHAM PAC–1–2022. Conduct the first test in accordance with ambient conditions for test configuration 1C in Table 2 of AHAM PAC–1–2022, and measure cooling capacity ($Capacity_{DD\_95\_Full}$) and input power ($P_{DD\_95\_Full}$). Conduct the second test in accordance with the ambient conditions for test configuration 1E in Table 2 of AHAM PAC–1–2022, with the compressor speed set to low for the duration of cooling mode testing (in accordance with the manufacturer instructions as described in section 7.1.10), and measure cooling capacity ($Capacity_{DD\_83\_Low}$) and input power ($P_{DD\_83\_Low}$). When conducting standby power testing using the sampling method described in section 5.3.2 of IEC 62301, if the standby mode is cyclic and irregular or unstable, collect 10 cycles worth of data. As discussed in Paragraph 5.1, Note 1 of IEC 62301, allow sufficient time for the unit to reach the lowest power state before proceeding with the test measurement.

5. Calculation of Derived Results From Test Measurements

Perform calculations from test measurements to determine Seasonally Adjusted Cooling Capacity (SACC) and Annualized Energy Efficiency Ratio (AEER) in accordance with AHAM PAC–1–2022, section 9 unless otherwise specified in this section.

5.1 *Adjusted Cooling Capacity.* Calculate the adjusted cooling capacities at the 95 °F and 83 °F operating conditions specified below of the sample unit, in Btu/h, according to the following equations.

For a single-duct single-speed unit:

$ACC_{95} = Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_95}$

$ACC_{83} = 0.6000 \times (Capacity_{SD} - Q_{duct\_SD} - Q_{infiltration\_95})$

For a single-duct variable-speed unit:

$ACC_{95} = Capacity_{SD\_Full} - Q_{duct\_SD\_Full} - Q_{infiltration\_95}$

$ACC_{83} = Capacity_{SD\_Low} - Q_{duct\_SD\_Low} - Q_{infiltration\_83\_Low}$

For a dual-duct single-speed unit:

$ACC_{95} = Capacity_{DD\_95} - Q_{duct\_DD\_95} - Q_{infiltration\_95}$

$ACC_{83} = 0.5363 \times (Capacity_{DD\_83} - Q_{duct\_DD\_83} - Q_{infiltration\_83})$

For a dual-duct variable-speed unit:

$ACC_{95} = Capacity_{DD\_95\_Full} - Q_{duct\_DD\_95\_Full} - Q_{infiltration\_95}$

$ACC_{83} = Capacity_{DD\_\_Low} - Q_{duct\_DD\_83\_Low} - Q_{infiltration\_83\_Low}$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacity of the sample unit, in Btu/h, calculated from testing at:

For a single-duct single-speed unit, test configuration 2A in Table 2 of AHAM PAC–1–2022.

For a single-duct variable-speed unit, test configurations 2B and 2C in Table 2 of AHAM PAC–1–2022.

For a dual-duct single-speed unit, test configurations 1A and 1B in Table 2 of AHAM PAC–1–2022.

For a dual-duct variable-speed unit: test configurations 1C and 1E in Table 2 of AHAM PAC–1–2022.

$Capacity_{SD}$, $Capacity_{SD\_Full}$, $Capacity_{SD\_Low}$, $Capacity_{DD\_95}$, $Capacity_{DD\_83}$, $Capacity_{DD\_95\_Full}$, and $Capacity_{DD\_83\_Low}$ = cooling capacity, in Btu/h, measured in testing at test configuration 2A, 2B, 2C, 1A, 1B, 1C, and 1E of Table 2 in section 8.1 of AHAM PAC–1–2022, respectively.

Q_{duct_SD}, $Q_{duct\_SD\_Full}$, $Q_{duct\_SD\_Low}$, $Q_{duct\_DD\_95}$, $Q_{duct\_DD\_83}$, $Q_{duct\_DD\_95\_Full}$, and $Q_{duct\_DD\_83\_Low}$ = duct heat transfer while operating in cooling mode for each duct configuration, compressor speed (where applicable) and temperature condition (where applicable), calculated in section 9.1 of AHAM PAC–1–2022, in Btu/h.

$Q_{infiltration\_95}$, $Q_{infiltration\_83}$, and $Q_{infiltration\_83\_Low}$ = total infiltration air heat transfer in cooling mode, in Btu/h, for each of the following compressor speed and duct configuration combinations:

For a single-duct single-speed unit, use $Q_{infiltration\_95}$ as calculated for a single-duct single-speed unit in section 9.2 of AHAM PAC–1–2022.

For a single-duct variable-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83\_Low}$ as calculated for a single-duct variable-speed unit in section 9.2 of AHAM PAC–1–2022.

For a dual-duct single-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83}$ as calculated for a dual-duct single-speed unit in section 9.2 of AHAM PAC–1–2022.

For a dual-duct variable-speed unit, use $Q_{infiltration\_95}$ and $Q_{infiltration\_83\_Low}$ as calculated for a dual-duct variable-speed unit in section 9.2 of AHAM PAC–1–2022.

0.6000 and 0.5363 = empirically-derived load-based capacity adjustment factor for a single-duct and dual-duct single-speed unit, respectively, when operating at test conditions 2A and 1B.

5.2 *Seasonally Adjusted Cooling Capacity.* Calculate the seasonally adjusted cooling capacity for the sample unit, SACC, in Btu/h, according to:

$SACC = ACC_{95} \times 0.144 + ACC_{83} \times 0.856$

Where:

ACC_{95} and ACC_{83} = adjusted cooling capacities at the 95 °F and 83 °F outdoor temperature conditions, respectively, in Btu/h, calculated in section 5.1 of this appendix.

0.144 = empirically-derived weighting factor for ACC_{95}.

0.856 = empirically-derived weighting factor for ACC_{83}.

5.3 *Annual Energy Consumption.* Calculate the annual energy consumption in each operating mode, AECm, in kilowatt-hours per year (kWh/year). Use the following annual hours of operation for each mode:

TABLE 1—ANNUAL OPERATING HOURS

Operating mode	Annual operating hours
Cooling Mode Test Configurations 1A, 1C, 2A (95), 2B	164
Cooling Mode Test Configurations 1B, 2A (83)	586
Cooling Mode Test Configuration 1E, 2C	977
Off-Cycle, Single-Speed	391
Off-Cycle, Variable-Speed	0
Total Cooling and Off-cycle Mode	1,141
Inactive or Off Mode	1,844

Calculate total annual energy consumption in all modes according to the following equations:

$AEC_{ia/om} = P_{ia/om} \times t_{ia/om} \times k$

For a single-duct single-speed unit:

$AEC_{95} = P_{SD\_95} \times t_{SD\_95} \times k$

$$AEC_{83} = \frac{P_{SD\_83} \times t_{SD\_83} \times k}{0.82}$$

For a single-duct variable-speed unit:

$AEC_{95} = P_{SD\_Full} \times t_{SD\_Full} \times k$

$AEC_{83} = P_{SD\_Low} \times t_{SD\_Low} \times k$

For a dual-duct single-speed unit:

$AEC_{95} = P_{DD\_95} \times t_{DD\_95} \times k$

$$AEC_{83} = \frac{P_{DD\_83} \times t_{DD\_83} \times k}{0.77}$$

For a dual-duct variable-speed unit:

$AEC_{95} = P_{DD\_95\_Full} \times t_{DD\_95\_Full} \times k$

$AEC_{83} = P_{DD\_83\_Low} \times t_{DD\_83\_Low} \times k$

Where:

AEC_{95} and AEC_{83} = total annual energy consumption attributed to all modes representative of either the 95 °F and 83 °F operating condition, respectively, in kWh/year.

P_m = average power in each mode, in watts, as determined in sections 4.1.1 and 4.1.2.

t_m = number of annual operating time in each mode, in hours.

k = 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.
0.82 = empirically-derived factor representing efficiency losses due to compressor cycling outside of fan operation for single-duct units
0.77 = empirically-derived factor representing efficiency losses due to compressor cycling outside of fan operation for dual-duct units

m represents the operating mode:

—''DD_95'' and ''DD_83'' correspond to cooling mode in Test Configurations 1A and 1B in Table 2 of AHAM PAC–1–2022, respectively, for dual-duct single-speed units,
—''DD_95_Full'', ''DD_83_Low'' correspond to cooling mode in Test Configurations 1C and 1E in Table 2 of AHAM PAC–1–2022, respectively, for dual-duct variable-speed units,
—''SD_95'' corresponds to cooling mode in Test Configuration 2A in Table 2 of AHAM PAC–1–2022 for single-duct single-speed units, for use when calculating AEC at the 95 °F outdoor temperature condition,
—''SD_83'' corresponds to cooling mode in Test Configuration 2A in Table 2 of AHAM PAC–1–2022 for single-duct single-speed units, for use when calculating AEC at the 83 °F outdoor temperature condition,
—''SD_Full'' and ''SD_Low'' correspond to cooling mode in Test Configurations 2B and 2C in Table 2 of AHAM PAC–1–2022, respectively, for single-duct variable-speed units,
—''oc'' corresponds to off-cycle,
—''ia/om'' corresponds to inactive or off mode,

5.4 *Annualized Cooling and Energy Ratio.* Calculate the annualized energy efficiency ratio, AEER, in Btu/Wh, according to the following equation:

$$AEER = 0.001 \times \frac{(ACC_{95} \times 164) + (ACC_{83} \times 977)}{AEC_{95} + AEC_{83} + AEC_{oc} + AEC_{ia/om}}$$

Where:

AEER = the annualized energy efficiency ratio of the sample unit in Btu/Wh.
ACC_{95} and ACC_{83} = adjusted cooling capacity at the 95 °F and 83 °F outdoor temperature conditions, respectively, calculated in section 5.1 of this appendix.
AEC_{95}, AEC_{83}, AEC_{oc}, and $AEC_{ia/om}$ = total annual energy consumption attributed to all modes representative the 95 °F operating condition, the 83 °F operating condition, off-cycle mode, and inactive or off mode respectively, in kWh/year, calculated in section 5.3 of this appendix.
t_{cm_95} = number of annual hours spent in cooling mode at the 95 °F operating condition, t_{DD_95} for dual-duct single-speed units, $t_{DD\_95\_Full}$ for dual-duct variable-speed units, t_{SD_95} for single-duct single-speed units, or t_{SD_Full} for single-duct variable-speed units, defined in section 5.3 of this appendix.
164 = number of annual hours spent in cooling mode at the 95 °F operating condition, as shown in Table III.2
977 = number of annual hours spent in cooling mode and off-cycle mode at the 83 °F operating condition, defined in section 5.3 of this appendix. 0.001 = kWh/Wh conversion factor for watt-hours to kilowatt-hours.

■ 9. Amend § 430.32 by revising paragraph (cc) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(cc) *Portable air conditioners.* Single-duct portable air conditioners and dual-duct portable air conditioners manufactured on or after January 10, 2025 must have a combined energy efficiency ratio (CEER) in Btu/Wh no less than:

$$CEER = 1.04 \times \frac{SACC}{(3.7117 \times SACC^{0.6384})}$$

SACC: For single-speed portable air conditioners, SACC is seasonally adjusted cooling capacity in Btu/h, as determined in appendix CC of subpart B of this part. For variable-speed portable air conditioners, SACC shall be $SACC_{Full}$ in Btu/h, as determined in appendix CC of subpart B of this part.

* * * * *

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FEDERAL REGISTER

Vol. 88 Monday,
No. 93 May 15, 2023

Part III

The President

Notice of May 11, 2023—Continuation of the National Emergency With Respect to Yemen

Federal Register
Vol. 88, No. 93
Monday, May 15, 2023

Presidential Documents

Title 3—

The President

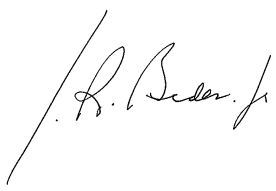
Notice of May 11, 2023

Continuation of the National Emergency With Respect to Yemen

On May 16, 2012, by Executive Order 13611, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Yemen and others that threatened Yemen's peace, security, and stability. These actions include obstructing the political process in Yemen and blocking the implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provide for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people.

The actions and policies of certain former members of the Government of Yemen and others in threatening Yemen's peace, security, and stability continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13611 on May 16, 2012, to deal with that threat must continue in effect beyond May 16, 2023. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13611 with respect to Yemen.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 11, 2023.

[FR Doc. 2023–10487
Filed 5–12–23; 11:15 am]
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