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Presidential Documents

Title 3—

The President

Proclamation 10582 of May 19, 2023

National Safe Boating Week, 2023

By the President of the United States of America

A Proclamation

Every year, nearly 100 million Americans go boating in our Nation's lakes, rivers, bays, and oceans—a number that surged during the pandemic, as more people sought peace outdoors. With summer now approaching, countless families are again drawn to the promise and possibility of time on the water. During National Safe Boating Week, we remind one another to be safe and responsible and to do all we can to prevent boating accidents and prepare for emergencies.

Whether fishing, sailing, canoeing, kayaking, jet skiing, or motor boating, safe boating starts with planning ahead. More than 10 percent of American households now own some kind of boat, and they should each make sure their vessel meets Federal safety standards. The civilian Coast Guard Auxiliary can send volunteers to examine boats for free and tell their owners how to improve safety. Free boating safety courses are available in all 50 States, and the Coast Guard Auxiliary and groups like America's Boating Club train people online and in-person in boat handling, marine navigation, engine maintenance, weather prediction, and more.

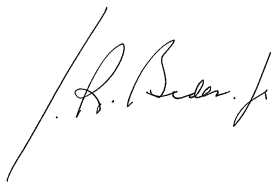
Simple things can be life-saving: life jackets, weather forecasts, maps—especially in unfamiliar areas—and emergency communications tools. Boating sober, without alcohol or drugs, is so important. And every boat operator should always wear their engine-cut-off switch lanyard in order to automatically stop the boat if they are thrown into the water.

Operating a boat is a serious thing, like driving a car. It demands attention and caution, even as it gives boaters a profound feeling of freedom and peace. This week, we thank the courageous members of the United States Coast Guard—along with the Federal, State, Tribal, and local partners—who sacrifice so much to protect boaters and help rescue those in need at a moment's notice. We should honor their work by each doing our own part to keep life on the water safe.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved on June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period before Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim May 20 through May 26, 2023, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and by taking advantage of boating safety education opportunities. I also encourage the Governors of the States and Territories, and appropriate officials of all units of government, to join me in encouraging boating safety in every community.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2023–11194
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Presidential Documents

Proclamation 10583 of May 19, 2023

Emergency Medical Services Week, 2023

By the President of the United States of America

A Proclamation

Every day, across our country, paramedics, emergency medical technicians, 911 dispatchers, and other first responders rush to fellow Americans' aid with compassion and lifesaving strength. During Emergency Medical Services (EMS) Week, we celebrate their service and recommit to getting them the resources and support they need to do their essential frontline work for us all.

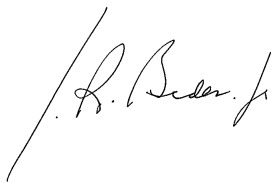
The pandemic made every American aware of the absolute courage and incredible sacrifices made by EMS providers nationwide. They have had to work longer hours, taking on new roles and new risks, often at great personal cost—whether braving a deadly virus, rushing to save victims of gun violence, enduring dangerous natural disasters, or simply supporting people at the most vulnerable moments of their lives. We owe them. We have a duty to care for those who care for us.

Since I took office, my Administration has worked to help State, local, Tribal, and territorial governments keep EMS providers on the payroll, buy better equipment, and improve training. We have made resources available to help first responders deal with trauma and burnout. And we are helping to ease the crippling student debt burden that so many EMS providers live with by finally fixing the Public Service Loan Forgiveness program. I am proud that, to date, we have helped over 450,000 public service employees, including EMS providers, see billions of dollars in student loans erased. Meanwhile, we are working to ease staffing shortages by making it easier for fire departments to retain and recruit more firefighters, who often provide emergency medical services so other first responders will not be stretched thin.

Saving lives is not just what tireless EMS providers do—it is who they are. I have seen their commitment up close. They are the steel spine of our Nation, and they give each of us the peace of mind of knowing that someone will be there to catch us if we fall.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 21 through May 27, 2023, as National Emergency Medical Services Week. I call upon public officials, doctors, nurses, paramedics, EMS providers, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities to honor our brave EMS workers and to pay tribute to the EMS providers who have lost their lives in the line of duty.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2023–11202
Filed 5–23–23; 8:45 am]
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Presidential Documents

Proclamation 10584 of May 19, 2023

World Trade Week, 2023

By the President of the United States of America

A Proclamation

My Administration is committed to building an economy from the bottom up and middle out, ensuring every worker gets a fair shot at the American Dream. Global trade is a key part of making that dream a reality. By expanding markets around the world for American businesses and crafting rules for fair competition, we can empower our workers, protect our planet, and promote inclusive prosperity. During World Trade Week, we recommit to writing a new story on trade—a worker-centered story—where everyone has dignity and opportunity and no one is left behind.

This new story begins with investing in America. For decades, the middle class and thriving towns across America were hollowed out as good-paying jobs moved overseas and factories at home closed down. My Administration is changing that. Through our blue-collar blueprint for America, we have created more than 12 million jobs and brought unemployment down to its lowest rate in more than 50 years. Across the country, we are witnessing a manufacturing boom, and factories are coming back to America to produce the semiconductors that power everything from cellphones and automobiles to the technology that will power our clean energy future. In every State, construction is underway to rebuild our roads, bridges, ports, airports, and water systems.

These investments in our country will help us maintain our innovative edge, boost our industrial capacity, and ensure we have the best-trained workforce—making us a stronger, more capable partner for our allies and all those who share our vision for a more equitable economic future around the world. That is why 13 economies in the Indo-Pacific stepped up to join the United States in strengthening labor standards, incentivizing the use of clean energy, and protecting our economies from corruption. Together with 11 of our neighbors in the Western Hemisphere, we are working to drive inclusive regional economic growth and create good-quality jobs. We are working to increase trade with Kenya and Taiwan—two vibrant partners in critical parts of the world. And we are working closely with international partners to build more resilient and reliable supply chains for critical minerals used in products like electric vehicle batteries.

We are also deepening our cooperation with the European Union—negotiating the world's first emission-based trade arrangement on steel and aluminum to reward fair trade, promote clean manufacturing, and generate good jobs on both sides of the Atlantic. At the same time, the United States and the European Union are collectively addressing unfair competition from non-market economies and authoritarian regimes and working to eliminate forced labor from global supply chains.

We know that, with every new commitment we make, we must also enforce existing ones to build trust and confidence in trade. That is why my Administration has been laser-focused on working through the United States-Mexico-Canada Agreement to uphold our commitment to workers' rights and environmental protections and to ensure that our dairy farmers and businesses in the energy and agricultural biotechnology sectors are treated fairly. We also remain committed to the World Trade Organization and to working

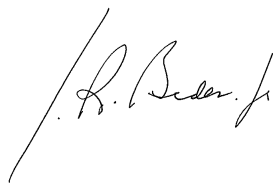
with nations around the world to help the institution more effectively promote fair competition, transparency, and the rule of law while fostering supply chain resiliency through improved border procedures and addressing challenges like the climate crisis.

At home, my Administration is incorporating diverse voices into our policymaking—from small businesses and entrepreneurs to manufacturers, farmers, ranchers, fishers, and producers—to ensure trade works for more sectors of the American economy. We are taking steps to expand the benefits of trade to historically underrepresented and underserved communities, including making it easier for small- and medium-sized enterprises to access loans and loan guarantees offered by the Export-Import Bank of the United States, and working to double the number of businesses receiving export assistance from the Department of Commerce.

In America, we believe that everyone deserves a shot at prosperity. My Administration will continue to make sure trade is a force for good for all Americans—lifting up workers and businesses, forging lasting partnerships around the globe, and building a better and brighter tomorrow for us all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 21 through May 27, 2023, as World Trade Week. I call upon all Americans to observe this week and to celebrate with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2023–11206
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Proclamation 10585 of May 19, 2023

Armed Forces Day, 2023

By the President of the United States of America

A Proclamation

On Armed Forces Day, we honor all the members of our Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and National Guard and Reserve forces. United by a common call to serve, these brave patriots not only comprise the finest fighting force the world has ever known but also represent the very best of our Nation.

Today, less than 1 percent of Americans currently wear the uniform—stepping up to defend the other 99 percent of our Nation with honor and courage. Through trials and testing as well as dangers and deployments, our service members remain resilient and resolved in their mission. They—and their families, caregivers, and survivors—also shoulder unique burdens, serving and sacrificing for our Nation's core values: freedom, democracy, and liberty. And this year, as we mark the 50th anniversary of our all-volunteer force and the 75th anniversaries of a desegregated military and women's integration, we are reminded that our Armed Forces are stronger and more capable than ever because of the diverse range of skillsets and experiences of our service members.

On Armed Forces Day, we also renew our sacred obligation to all those who serve: to prepare them when we send them into harm's way and care for them and their families while they are deployed and when they return home. That is exactly what my Administration is doing. I have signed more than 25 bipartisan bills, including the PACT Act—the most significant law in our Nation's history to help millions of veterans who were exposed to toxic fumes from burn pits or other toxic substances during their military service—to ensure our service members and veterans and their families, caregivers, and survivors get the support they deserve. We have also expanded access to mental health care for our service members and veterans—a critical step in reducing suicides, which continue to claim far too many lives of our military members. My Administration has also worked to fix the Public Service Loan Forgiveness program—a key step in meeting our commitment to service members and those who have chosen other professions in public service. To date, we have helped over 450,000 borrowers who work in public service, including service members, get nearly $31 billion in student loan forgiveness. And, through the First Lady's Joining Forces initiative, we are helping military spouses find good-paying jobs, ensuring military-connected children are supported in their classrooms, and aiding this community with resources to improve their health and well-being.

Our Nation also has an obligation to ensure that every service member—regardless of gender, gender identity, sexual orientation, race, or religious background—feels safe in the ranks and has their contributions fully valued. Within my first month in office, I was proud to rescind the ban on openly transgender people serving in the military because no patriot should be barred from serving their country for being their authentic self. My Administration worked with the Congress to reform how the military investigates and prosecutes sexual assault, sexual harassment, domestic violence, and other related crimes, including by shifting authority from commanders to

independent prosecutors. Working with leaders across the Department of Defense, I will continue to ensure that a culture of decency and respect always prevails within our ranks—including speaking out and standing up against harassment, abuse, and hate in all its forms.

Throughout our history, America's Armed Forces have been sentinels of liberty and defenders of dignity. By keeping the flame of freedom burning bright, they have made our Nation stronger and the world safer. So today, let us all join together in honoring their courage, sacrifice, and service.

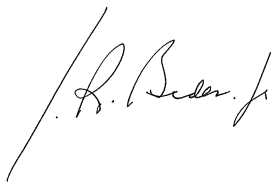
NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense, on behalf of the Army, Navy, Air Force, Marine Corps, Space Force, and the Secretary of Homeland Security on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for soliciting the participation and cooperation of civil authorities and private citizens. I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States to provide for the observance of Armed Forces Day within their respective jurisdictions each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States. I also invite veterans, civic leaders, and other organizations to join in the observance of Armed Forces Day each year.

Finally, I call upon all Americans to display the flag of the United States at their homes and businesses on Armed Forces Day, and I urge citizens to learn more about military service by attending and participating in the local observances of the day.

Proclamation 10400 of May 20, 2022, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2023–11208

Filed 5–23–23; 8:45 am]

Billing code 3395–F3–P

Presidential Documents

Proclamation 10586 of May 19, 2023

National Maritime Day, 2023

By the President of the United States of America

A Proclamation

On National Maritime Day, we honor the thousands of dedicated merchant mariners who serve on United States vessels around the world. During times of both peace and war, merchant mariners are always there—stepping up to transport equipment, troops, and goods across the globe to make our country safer and stronger.

With professionalism and passion, merchant mariners have forged us into the maritime Nation we are today. During the Revolutionary War, merchant vessels joined the vastly outnumbered American fleet to help defend our independence. During World War II, as our brave service members battled the forces of fascism, more than a quarter-million members of the Merchant Marine volunteered to transport tanks, ammunition, and troops across the Atlantic and Pacific theaters. Many of them made the ultimate sacrifice in the service of freedom. And today, merchant mariners not only help move hundreds of billions of dollars' worth of cargo through our 25,000 miles of waterways and more than 360 commercial ports annually—they also crew vessels of our United States Ready Reserve, shipping vital military cargo to help the people of Ukraine defend themselves against Russia's brutal war.

My Administration remains steadfast in its support of the Merchant Marine as well as the Jones Act, which ensures American workers see the benefits of our domestic maritime industry. We are also making historic investments to improve our maritime supply chains by making it easier, faster, cheaper, cleaner, and safer for ships to get in and out of our ports. We are strengthening our support for licensed Merchant Marine Officers, including requesting $196 million in my 2024 Budget to upgrade the United States Merchant Marine Academy's campus, expand training, and help prevent sexual assault and support survivors—because every person at the Academy deserves to feel safe and have their contributions fully valued. We are also working to advance diversity, equity, and inclusion in the ranks of the Merchant Marine because our economy and national security are strongest when we draw on the full skillsets and diversity of our Nation.

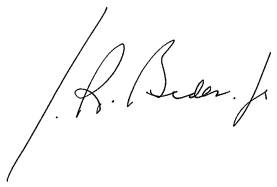
The United States Merchant Marine underpins our Nation's prosperity and upholds our Nation's highest principles—freedom, liberty, and dignity. Today, and every day, we honor merchant mariners' service and sacrifice and renew our commitment to stand by their side, from sea to shining sea.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' to commemorate the first transoceanic voyage by a steamship in 1819 by the S.S. Savannah. By this resolution, the Congress has authorized and requested the President to issue annually a proclamation calling for its appropriate observance. I also request that all ships sailing under the American flag dress ship on that day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim May 22, 2023, as National Maritime Day. I call upon all Americans to observe this day and to celebrate the United

States Merchant Marine and maritime industry with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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. 2023–11209
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Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2019–BT–TP–0021]

RIN 1904–AE75

Energy Conservation Program: Test Procedures for Faucets and Showerheads

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

ACTION: Final rule.

SUMMARY: This final rule amends the test procedures for faucets and showerheads to incorporate the current version of the referenced industry standard, American Society of Mechanical Engineers Standard A112.18.1–2018/CSA B125.1–18, ''Plumbing supply fittings.'' This final rule also adds definitions for low-pressure water dispensers and pot fillers and excludes them from the faucet definition. Finally, this final rule provides further detail for conducting the flow rate measurement.

DATES: The effective date of this rule is June 23, 2023. The amendments will be mandatory for product testing starting November 20, 2023.

The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register on June 23, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2019-BT-TP-0021*. 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. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email *ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standard into title 10 of the Code of Federal Regulations (''CFR'') part 430:

ASME A112.18.1–2018/CSA B125.1–2018, ''Plumbing supply fittings,'' CSA-published July 2018 (''ASME A112.18.1–2018'').

Copies of ASME A112.18.1–2018 can be obtained from the American Society of Mechanical Engineers (''ASME'') at 2 Park Avenue, New York, NY 10016–5990, or by visiting *www.asme.org*.

For a further discussion of this standard, *see* section IV.N of this document.

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I. Authority and Background

Faucets and showerheads are included in the list of ''covered products'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(15) and (16)) DOE's test procedures for faucets and showerheads are currently prescribed at 10 CFR 430.23(s) and (t); 10 CFR subpart B of part 430, appendix S. The following sections discuss DOE's authority to establish test procedures for faucets and showerheads and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, 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 of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include faucets and showerheads, the subject of this

[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.

document. (42 U.S.C. 6292(a)(15) and (16))

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, water use (in the case of showerheads, faucets, water closets, and urinals), 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 directs that the test procedures for faucets and showerheads are to be the test procedures specified in American Society of Mechanical Engineers (''ASME'') Standard A112.18.1M–1989, ''Plumbing Fixture Fittings.'' (42 U.S.C. 6293(b)(7)(A)) EPCA further directs that, if the test procedure requirements of ASME A112.18.1M–1989 are revised at any time and approved by the American National Standards Institute (''ANSI''), DOE must amend the Federal test procedures to conform to the revised ASME standard, unless DOE determines by rule that to do so would not meet the requirements of EPCA that the test procedures be reasonably designed to produce test results which measure water use during a representative average use cycle as determined by DOE, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(7)(B); 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 faucets and showerheads, 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, water use, or 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))

DOE is publishing this final rule in satisfaction of its statutory obligations. (42 U.S.C. 6293(b)(1)(A) and (7)(B))

B. Background

DOE's existing test procedures for faucets and showerheads appear at 10 CFR part 430, subpart B, appendix S (''appendix S'') and 10 CFR 430.23 (s) and (t).

DOE last amended the test procedures for faucets and showerheads on October 23, 2013 (''October 2013 Final Rule''). 78 FR 62970. In that final rule, DOE adopted through reference certain provisions of the 2012 version of ASME A112.18.1 as part of the test procedures for faucets and showerheads. 78 FR 62970, 62980. Since then, the 2012 version of the ASME standard was re-affirmed in 2017, and then updated in 2018 to ASME A112.18.1–2018, which is the current version of the industry standard.

On May 31, 2022, DOE published a notice of proposed rulemaking (''NOPR'') presenting DOE's proposals to amend the test procedures for faucets and showerheads. 87 FR 32351 (''May 2022 NOPR''). DOE held a public meeting related to this NOPR on June 22, 2022.

DOE received comments in response to the May 2022 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE MAY 2022 NOPR

Commenter(s)	Reference in this final rule	Comment number in the docket	Commenter type
American Supply Association	ASA	13	Trade Association.
Appliance Standards Awareness Project, Natural Resources Defense Council, American Council for an Energy-Efficient Economy, New York State Energy Research and Development Authority, Northwest Energy Efficiency Alliance, Washington State Department of Commerce.	Joint Advocates	14	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison (collectively, the California Investor-Owned Utilities).	CA IOUs	15	Utility Companies.
Plumbing Manufacturers International	PMI	16	Trade Association.
Regulosity LLC, on behalf of Neoperl, Inc	Neoperl	12	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[3] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the June 22, 2022 public meeting, DOE cites the written comments throughout this final rule.

II. Synopsis of the Final Rule

In this final rule, DOE amends 10 CFR 430.2, 10 CFR 430.3, and appendix S as follows:

- Include definitions for low-pressure water dispensers and pot fillers;
- Update the faucet definition by explicitly excluding low-pressure water dispensers and pot fillers;
- Incorporate by reference the latest revision to the applicable industry standard—ASME A112.18.1–2018, ''Plumbing Supply Fittings,'' as it pertains to flow rate measurement; and
- Add further direction for conducting the flow rate measurements.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Does not define low-pressure water dispensers or pot fillers.	Defines the terms low-pressure water dispensers and pot fillers.	Clarifies scope of coverage.
Does not explicitly exclude low-pressure water dispensers or pot fillers from the faucet definition.	Explicitly excludes low-pressure water dispensers and pot fillers from the faucet definition.	Clarifies scope of coverage.
Incorporates the 2012 version of ASME Standard A112.18.1 for measurement of flow rate.	Incorporates the 2018 version of ASME Standard A112.18.1.	Harmonize with updated industry standard.
Aside from referencing ASME Standard A112.18.1, includes limited guidance as to how to conduct the flow measurement test procedure.	Adds additional guidance, in accordance with current industry practices, to ensure appropriate equipment is being used and to ensure repeatability of the industry standards in both the fluid meter and time/volume flow rate test methods.	Response to stakeholder comment; improve repeatability of test results.

DOE has determined that the amendments described in section III and adopted in this document will not alter the measured flow rate of faucets and showerheads or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. Additionally, DOE has determined that the amendments will not increase the cost of testing. Discussion of DOE's actions 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 water use must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule.

III. Discussion

A. Scope of Applicability

This rulemaking applies to faucets and showerheads, which are discussed in the following sections.

1. Faucets

EPCA and DOE define ''faucet'' as a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet. (42 U.S.C. 6291(31)(E); 10 CFR 430.2). In the May 2022 NOPR, DOE discussed that it had identified products characterized in the market as ''low-pressure water dispensers'' and ''pot fillers,'' which appear to be within the scope of the statutory term ''faucet.'' 87 FR 32351, 32354 (*see* 86 FR 49261, 49263). DOE noted that it did not consider low-pressure water dispensers or pot fillers when establishing the current test procedure and standards for faucets. *Id.*

In the May 2022 NOPR, DOE also stated that the purpose of low-pressure water dispensers (''LPWDs'') and pot fillers is to fill a vessel with water (*e.g.,* a glass or a cooking vessel), and given this function, the amount of water provided by such products during consumer use would be dependent on the volume of the vessel and independent of the flow rate of the product. 87 FR 32351, 32354. Accordingly, DOE noted that establishing conservation standards would not result in any water savings and could diminish the usefulness of such products by increasing the amount of time required to fill a vessel with a particular volume of water. 87 FR 32351, 32355.

As such, DOE tentatively determined that that low-pressure water dispensers and pot fillers are not within the definition of ''faucet'' for the purpose of Part A of EPCA, and DOE proposed to amend the definition of ''faucet'' at 10 CFR 430.2 to explicitly exclude low-pressure water dispensers and pot fillers. *Id.* at 87 FR 32355. Therefore, in the May 2022 NOPR, DOE proposed to define a faucet as ''a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator, excluding low-pressure water dispensers and pot fillers.'' *Id.*

ASA commented that it did not see any issue with incorporating text that clarifies that LPWDs are excluded from the faucet definition. (ASA, No. 13 at p. 1)

PMI agreed with DOE that LPWDs and pot fillers are not within the definition of faucet. Accordingly, PMI recommended that DOE retain the current definition with the addition of the new text ''excluding low-pressure water dispensers and pot fillers'', but without removing the existing text ''for a lavatory or kitchen faucet.'' (PMI, No. 16 at p. 2)

ASA noted that the proposed definition of the term faucet in the May 2022 NOPR removed the text ''for a lavatory or kitchen faucet''[4] as it relates to replacement aerators and recommended that DOE not remove this text, asserting that its removal would lead to confusion and uncertainty as to whether replacement aerators for other purposes are covered. (ASA, No. 13 at p. 2) Relatedly, Neoperl noted the impacts of the proposed removal of the type of replacement aerator from the

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for faucets and showerheads. (Docket No. EERE–2019–BT–TP–0021, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[4] As discussed, EPCA defined the term faucet as a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator *for a lavatory or kitchen faucet* [emphasis added].

faucet definition. Specifically, Neoperl explained that ''replacement aerator'' is a generic term used for components of many products and that there are numerous products that use replacement aerators which are not covered products. Neoperl also stated that clarification of the type of replacement aerator ensures that only replacement aerators for covered products meet the definition of faucet and the removal of the clarification will result in regulation of non-covered products, such as replacement aerators for bidets and bidet seats.'' (Neoperl, No. 12 at pp. 1–2)

The proposed change to the definition of faucet in the May 2022 NOPR was intended only to exclude LPWDs and pot fillers from the faucet definition. DOE did not intend for the proposed definition to change the wording or intent of the portion of the definition that relates to replacement aerators and is therefore reinstating the phrase ''for a lavatory or kitchen faucet'' as suggested by commenters.

For the reasons discussed in the May 2022 NOPR, and in consideration of comments received on the proposal, DOE is amending the definition for faucet at 10 CFR 430.2 to read ''a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet, excluding low-pressure water dispensers and pot fillers.''

a. Low-Pressure Water Dispenser Definition

In conjunction with the proposed amendment to the definition of the term faucet, DOE proposed, in the May 2022 NOPR, to add a definition for the term ''low pressure water dispenser'' to mean a terminal fitting that dispenses drinking water at a pressure of 105 kPA (15 psi) or less. 87 FR 32351, 32355. DOE noted in the May 2022 NOPR that ASME A112.18.1–2018 defines a low-pressure water dispenser as ''a terminal fitting located downstream of a pressure reducing valve that dispenses drinking hot water above 71 °C (160 °F) or cold water or both at a pressure of 105 kPA (15 psi) or less.'' *Id.* DOE noted in the May 2022 NOPR that its authority generally applies to products as manufactured, not to the installation of products. (*See generally* 42 U.S.C. 6302) *Id.* DOE further noted that the proposed definition was a modification of the ASME A112.18.1–2018 definition to reference a product as manufactured, as opposed to its installation location. Additionally, DOE noted in the May 2022 NOPR that the proposed definition would exclude the drinking water temperature reference in the ASME A112.18.1–2018 definition. DOE tentatively determined in the May 2022 NOPR that the specified pressure was the relevant characteristic that would distinguish a low-pressure water dispenser from a faucet as defined for the purpose of applicability of the test procedure. *Id.*

DOE also discussed in the May 2022 NOPR that DOE generally tries to identify physical features in its definitions that would allow a third-party to easily distinguish between products. *Id.* DOE has previously stated that relying on a manufacturer's intent can reduce regulatory transparency and creates challenges for enforcement. *Id.* (*see* 87 FR 13901, 13904). Due to these concerns with trying to interpret whether a product is designed to operate downstream of a pressure reducing valve or not, DOE stated in the May 2022 NOPR that it was also considering including other physical features in the definition that would allow low-pressure water dispensers to be easily identified, absent any information from the manufacturer. Based on research of these products, DOE understands that low-pressure water dispensers tend to have smaller diameter fittings for water connections. DOE has observed that LPWDs typically have ¼″ compression fittings, which is slightly smaller than the typical ⅜″ compression fitting of a faucet. DOE requested comment as to whether a ¼″ compression fitting could be universally identified as a universal characteristic of a LPWD that distinguishes it from faucets. *Id.* DOE also requested comment as to any additional physical features that distinguish a low-pressure water dispenser from a faucet. *Id.*

ASA commented that while they generally recommend DOE to be consistent with the LPWD definition in the industry standard, they were not opposed to DOE's definition as proposed. ASA noted that placing prescriptive requirements, such as physical features, into a product definition could lead to restricting innovation in design. However, ASA commented that the key element in defining the term LPWD is the design pressure. (ASA, No. 13 at pp. 1–2)

PMI recommended that the definition of LPWD be aligned with the definition of the same term in ASME A112.18.1–2018 because plumbing manufacturers are already testing LPWDs to the ASME standard. (PMI, No. 16 at p. 3) Accordingly, PMI recommended the following definition: Low-pressure water dispenser means a terminal fitting that dispenses hot water above 71 °C (160 °F) or cold water or both at a pressure of 105 kPa (15 psi) or less. *Id.* Further, PMI commented that a ¼″ compression fitting can be used for other products, and so it is not universally used in LPWDs, which could also be supplied with ¼″, ⅜″, or push fit connections. (PMI, No. 16 at p. 3)

While DOE observed that many LPWDs use a ¼″ compression fitting, the comment from PMI suggests that a ¼″ compression fitting may not be a universal characteristic of a LPWD that distinguishes it from faucets. Accordingly, DOE has determined not to incorporate a compression fitting size into the definition of LPWD.

Regarding PMI's recommendation to more closely align the LPWD definition with the industry standard by including the temperature references in the definition, DOE notes that PMI did not identify how the temperature is a relevant characteristic to distinguish LPWDs from faucets. Both LPWDs and faucets can dispense ''hot water above 71 °C (160 °F) or cold water or both.'' As such, DOE has determined that water temperature is not a universal characteristic that distinguishes LPWDs from faucets. DOE further notes that by excluding LPWDs from the scope of the DOE test procedure, manufacturers that are currently voluntarily measuring LPWD flow rate per ASME A112.18.1–2018 will not be impacted by the DOE definition of LPWD established in this final rule.

For the reasons discussed in the May 2022 NOPR, and in consideration of comments received, DOE is finalizing the definition for LPWD as ''a terminal fitting that dispenses drinking water at a pressure of 105 kPA (15 psi) or less,'' consistent with the definition proposed in the May 2022 NOPR.

b. Pot Filler Definition

In the May 2022 NOPR, DOE proposed to include a definition for ''pot fillers''. DOE discussed concerns that had been raised through stakeholder comment that pot fillers could be installed over a kitchen sink. 87 FR 32351, 32355. DOE noted that ASME A112.18.1–2018 does not define the term ''pot filler.'' DOE stated in the May 2022 NOPR that it had assessed products marketed as residential pot fillers and observed several characteristics that make it unlikely for a pot filler to be installed for regular discharge into a kitchen sink. Specifically, DOE discussed in the May 2022 NOPR that all the residential pot fillers that DOE observed have an

articulated arm,[5] two shut-off valves,[6] and are designed for a single supply line (*e.g.,* cold water).[7] 87 FR 32351, 32355. Based on these identifying characteristics, DOE proposed to define pot filler in 10 CFR 430.2 as ''a terminal fitting with an articulated arm and two or more shut-off valves that can accommodate only a single supply water inlet.'' *Id.* DOE requested comment as to whether other characteristics appropriately distinguished pot fillers from faucets or if there were other characteristics that were more appropriate. *Id.*

ASA commented that it was aware of pot fillers that have only one shut-off valve, and therefore the proposed term ''and two or more shut-off valves'' should not be included as part of the definition. (ASA, No. 13 at p. 2)

PMI stated that it concurs with DOE that products marketed as residential pot fillers make it unlikely for a pot filler to be installed for regular discharge into a kitchen sink. PMI commented that there are pot fillers available for sale that have a single shut-off valve as well as those that do not have an articulated arm. PMI provided a website link to a product marketed as a pot filler with a single shut-off valve. (PMI, No. 16 at p. 4) PMI suggested that DOE define a pot filler as a terminal fitting with only one outlet intended to discharge into a drinking, cooking, or other type of vessel without a drain. *Id.*

The examples provided by PMI in its comment indicate that not all pot fillers have two or more shut-off valves. Therefore, DOE has determined that pot fillers cannot be universally defined as having two or more shut-off valves and, as such, is removing this feature from the definition finalized in this final rule.

In addition, DOE conducted additional market research and identified a small number of products sold as residential pot fillers that use a ''swivel spout'' design, rather than an articulated arm. DOE has added PDF copies of web pages for two such products to the docket for this rulemaking.

As discussed in the May 2022 NOPR, the reason pot fillers typically have an articulated arm is because it allows the pot filler to extend (*i.e.,* reach) over a cooking surface, such as burners on a range, to fill pots. When not in use, the articulation allows the pot filler to be pushed flat against the wall and out of the way of the cooking surface. 87 FR 32351, 32355. For products with this ''swivel spout'' design, an identical functionality is provided in that the product can reach out over a cooking surface and be pushed flat (*i.e.,* retracted) when not in use.

Based on this review of the market, DOE has determined that, while most pot fillers use an articulated arm, some pot fillers may use an equivalent feature, which allows the pot filler to reach or extend over a cooking surface, such as burners on a range, to fill vessels. When not in use, this feature allows the pot filler to be retracted out of the way of the cooking surface. As such, in this final rule, DOE is clarifying the pot filler definition proposed in the May 2022 NOPR to specify that a pot filler has ''an articulated arm or the equivalent that allows the product to reach to fill vessels when in use and allows the product to be retracted when not in use.''

With regard to PMI's proposed definition, DOE notes that pot fillers are characterized by having only a single supply water inlet, as opposed to a single outlet. Additionally, a number of products, faucets, LPWDs, and pot fillers, all only have a single water outlet. In the May 2022 NOPR, DOE noted that pot fillers are designed for a single supply line (*e.g.,* cold water), limiting their suitability for use as a kitchen faucet, which are supplied with both hot and cold water. 87 FR 32351, 32355. DOE did not receive any comments suggesting that pot fillers are sold with more than one water supply inlet and has not identified any residential pot fillers on the market designed for multiple water supply inlets. Therefore, DOE has determined that accommodating only a single supply inlet is a suitable characteristic for distinguishing pot fillers from faucets.

As discussed in the May 2022 NOPR, a key difference between residential pot fillers and faucets is that the intended purpose of pot fillers is to fill a vessel and, as such, the water usage associated with pot fillers is directly related to the size of the vessel. 87 FR 32351, 32354. Regarding PMI's comment that pot fillers are designed to discharge into vessels without a drain, although the intended use of a pot filler is to discharge into vessels without a drain, nothing about the design of a pot filler makes it suitable only for this purpose (*i.e.,* pot fillers are also capable of discharging into a sink with a drain). As discussed previously, DOE generally strives to identify physical features in its definitions that would allow a third party to easily distinguish between products, rather than relying on the intended use of a product—which can reduce regulatory transparency and create challenges for enforcement. As such, DOE has determined that the intended purpose of discharging into a vessel without a drain is not a suitable characteristic for distinguishing pot fillers from faucets.

In consideration of comments received in response to the proposed definition in the May 2022 NOPR, as well as additional market research conducted by DOE as described in the preceding paragraphs, in this final rule DOE is adopting a definition for pot filler as follows: a terminal fitting that can accommodate only a single supply water inlet, with an articulated arm or the equivalent that allows the product to reach to fill vessels when in use and allows the product to be retracted when not in use.

2. Showerheads

EPCA defines ''showerhead'' as ''any showerhead (including a handheld showerhead), except a safety shower showerhead.'' (42 U.S.C. 6291(31)(D))

DOE further defines the term ''showerhead'' as a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads. 10 CFR 430.2. DOE defines ''hand-held showerhead'' to mean a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose. *Id.* DOE defines ''safety shower showerhead'' as a showerhead designed to meet the requirements of International Safety Equipment Association (''ISEA'') Standard ISEA Z358.1, *American National Standard for Emergency Eyewash and Shower Equipment. Id.*

In the May 2022 NOPR, DOE discussed comments it had previously received regarding body sprays. 87 FR 32351, 32356. In a final rule published December 20, 2021 (''December 2021 Final Rule''), DOE withdrew its

[5] As discussed in the May 2022 NOPR, the reason pot fillers have an articulated arm is because it allows the pot filler to extend over a cooking surface, such as burners on a range, to fill pots. When not in use, the articulation allows the pot filler to be pushed flat against the wall and out of the way of the cooking surface. 87 FR 32351, 32355.

[6] As discussed in the May 2022 NOPR, one shut-off valve is located at or near the wall and the other is located at or near the output of the pot filler. Given that pot-fillers are typically installed over locations that do not have a drain (*e.g.,* over a stove), the two shut-off valves minimize the chance of accidentally turning on the pot filler when there is not a vessel underneath because an accidental bumping of one shut-off valve from the off to the on position does not turn on the pot filler. 87 FR 32351, 32355.

[7] DOE noted in the May 2022 NOPR that having a single supply line limits the suitability of a pot filler for use as a kitchen faucet, which are generally supplied with both hot and cold water. 87 FR 32351, 32355.

previous definition for body spray.[8] DOE stated that the definition was inconsistent with the express purpose of EPCA to conserve water and does not best address the relationship between body sprays and showerheads. *Id.* at 86 FR 71799. Further, DOE stated that industry standards and the marketplace treat ''showerheads'' and ''body sprays'' similarly, with the only difference being in the installation location. *Id.* In the May 2022 NOPR, DOE noted that its regulatory definition of showerhead at 10 CFR 430.2 includes the provision ''typically from an overhead position.'' 87 FR 32728, 32356. DOE stated that given the ''typically from an overhead position'' language in the showerhead definition, DOE cannot make a general statement that all body sprays are showerheads, as some body sprays are installed exclusively at body height and exclusively spray horizontally (*i.e.,* are not overhead). *Id.* Further, DOE noted in the May 2022 NOPR that it had previously stated that when testing shower tower (also known as ''shower panel'') assemblies, which include body sprays, the components that are typically overhead (*i.e.,* the main showerhead and hand-held showerheads) are to be tested with the full flow diverted to those components only. *Id.* In addition, where it is not possible to isolate the covered portion of the shower tower, DOE has previously stated that all components are to be flowing at the maximum rate and the showerhead (which encompasses the component or set of components that are ''typically from an overhead position'') measured separately. 78 FR 62970, 62975. Accordingly, DOE stated in the May 2022 NOPR that to the extent to which a body spray meets the definition of ''showerhead,'' such product is subject to the 2.5 gallon per minute (''gpm'') standard regardless of the consumer installation orientation. *Id.* DOE did not propose any amendments in the May 2022 NOPR with respect to the definition of showerhead.

In response to the May 2022 NOPR, the Joint Advocates commented that there is no technical or market distinction that differentiates body sprays from showerheads aside from the position of installation. Further, the Joint Advocates commented that ''typically from an overhead position'' is not grounded in statute and that they do not believe that this phrase excludes certain body sprays because they spray horizontally simply due to their manner of installation. The Joint Advocates commented that if certain body sprays are excluded based on installation location, DOE should either explicitly include body sprays in the showerhead definition, or amend the definition to remove ''typically from an overhead position.'' (Joint Advocates, No. 14 at p. 2)

The CA IOUs commented that DOE should clarify that body sprays are subject to regulatory coverage. The CA IOUs stated that given the ''typically from an overhead position'' language in the definition, DOE cannot make a general statement that all body sprays are showerheads as some body sprays are installed at exclusively body height and exclusively spray horizontally (*i.e.* are not overhead). The CA IOUs stated that this statement seems to indicate a change since July 2021 in DOE's position on body sprays. Specifically, the CA IOUs stated that the discussion in the May 2022 NOPR suggests that if a body spray were developed that could not operate from an overhead position, it would be exempt from regulatory coverage. The CA IOUs recommended that to avoid market confusion, DOE should change the definition to clarify that all showerheads, regardless of orientation, are subject to regulatory coverage. (CA IOUs, No. 15 at pp. 1–2)

In response to these comments from the Joint Advocates and the CA IOUs regarding the distinction between ''body sprays'' and ''showerheads,'' DOE reiterates that the December 2021 Final Rule withdrew the prior definition for the term ''body spray.'' 86 FR 71797. As such, DOE does not currently distinguish between products marketed as ''body sprays'' and products marketed as ''showerheads.'' Whether a particular product is subject to DOE's test procedure for showerheads is determined by whether that product meets the current definition of ''showerhead,'' as established by the December 2021 Final Rule.[9] As an example, a particular product that sprays water onto a bather exclusively from a body height or horizontal position (*i.e.,* not from an overhead position) would not meet the definition of ''showerhead'' and would not be subject to DOE's test procedure for showerheads. Noting that such products are available on the market, DOE reiterates that it cannot make a general statement that all products marketed as ''body sprays'' are showerheads, as the term showerhead is defined in the CFR. DOE further notes, however, that the definition of showerhead does not necessarily exclude all products marketed as ''body sprays,'' to the extent that such products meet the criteria of the showerhead definition.

Accordingly, for the reasons discussed in the May 2022 NOPR and summarized in preceding paragraphs, in this final rule, DOE maintains its definition of the term showerhead. To the extent that a product meets the definition of ''showerhead,'' such product is subject to DOE's test procedure for showerheads.

B. Updates to Industry Standards

Appendix S currently references ASME A112.18.1–2012 for the flow rate test method. In the May 2022 NOPR, DOE proposed to update the faucets and showerheads test procedure to reference the latest version of the industry standard, which is ASME A112.18.1–2018. DOE discussed in the May 2022 NOPR that the updated standard does not include any amendments to the test procedures for faucets or showerheads. Further, DOE tentatively determined that referencing the most recent version of ASME A112.18.1–2018 would not impact: (1) the measured values of water use for faucets or showerheads under appendix S, (2) the representativeness of the results, or (3) the test burden. 87 FR 32351, 32357.

In response to the May 2022 NOPR, ASA supported the incorporation of ASME A112.18.1–2018. (ASA, No. 13 at p. 2) PMI agreed with DOE's tentative determination that updating the reference to ASME A112.18.1–2018 would not affect testing of faucets or showerheads or the measured flow rates, as manufacturers are already testing and certifying to this edition of the standard. (PMI, No. 16 at p. 4)

Accordingly, for the reasons discussed, DOE incorporates by reference ASME A112.18.1–2018 in this final rule.

C. Additional Direction in Conducting ASME A112.18.1–2018

DOE's current test procedure for evaluating the flow rate of faucets and showerheads is at appendix S and references ASME A112.18.1–2012. Specifically, DOE adopts through reference sections 5.4 and 5.4.2.2 of ASME A112.18.1–2012, which specify two alternate methods for measuring the flow rate of showerhead and faucets. One method, described as the fluid meter test in section 5.4.2.2(c) of ASME A112.18.1–2012, relies on a fluid meter installed upstream of the showerhead or faucet for measuring the flow rate. The second method, described as the time/volume method in section 5.4.2.2(d) of

[8] On December 16, 2020, DOE published a final rule that adopted a definition for ''body spray'' as ''a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.'' 85 FR 81341, 81359.

[9] *See* 86 FR 71797, 71810.

ASME A112.18.1–2012, relies on a container placed downstream of the showerhead or faucet that collects the water output during a measured period of time. The flow rate calculation divides the volume of water collected by the duration of time.

As discussed in section III.B of this document, DOE is incorporating by reference ASME A112.18.1–2018. The two methods for measuring flow rate in ASME A112.18.1–2018 are identical to those in ASME A112.18.1–2012.

In the May 2022 NOPR, in response to feedback provided by stakeholders, DOE proposed several additional specifications to the test procedure. 87 FR 32351, 32357. To develop these additional specifications, DOE conducted a thorough review of ASME A112.18.1–2018 and consulted two testing laboratories to identify common testing practices. DOE also reviewed other similar test procedures, including ASTM International (''ASTM'') F2324 ''Standard Test Method for Prerinse Spray Valves'' (''ASTM F2324''), which is currently incorporated by reference at 10 CFR 431.263 and referenced in the test procedure for commercial prerinse spray valves in 10 CFR 431.264.

In the May 2022 NOPR, DOE proposed that if the fluid meter test method is used: (1) the fluid meter must be rated for the flow rate range of the product being tested, (2) the fluid meter must be calibrated in accordance with manufacturer printed instructions and at the frequency specified in the manufacturer printed instructions, and (3) the fluid meter must be capable of reporting flow to a resolution of no less than two significant figures. 87 FR 32351, 32357–32358.

The Joint Advocates supported DOE's proposal to add additional directions to the industry test method. The Joint Advocates commented that implementing additional detail in line with current testing practices would better ensure accurate and repeatable testing. (Joint Advocates, No. 14 at p. 1)

ASA commented that it was not opposed to the additional specifications proposed by DOE. (ASA, No. 13 at p. 3)

PMI requested clarification regarding DOE's proposed requirement for a fluid meter to have a resolution of no less than two significant figures for non-metering faucets and showerheads. PMI noted that the reporting requirements in 10 CFR 429.28(b)(2) and 10 CFR 429.29(b)(2) for non-metering faucets and showerheads are rounded to the nearest 0.1 gallons instead. PMI further commented that it agreed that fluid meters used for metering faucets should have a resolution of no less than two significant figures, rounded to the nearest 0.01 gallons, in accordance with 10 CFR 429.28(b)(2). PMI recommended that DOE update the requirements for the fluid meter to be rated, and have a flow rate resolution, for the flow rate range of the product being tested ''to meet the reporting requirements of 10 CFR 429.28(b)(2) and 10 CFR 429.29(b)(2).'' (PMI, No. 16 at p. 5)

DOE agrees with PMI that the resolution requirements for the fluid meter test should align with the reporting requirements established in 10 CFR 429.28(b)(2) and 10 CFR 429.29(b)(2). DOE notes that ASTM F2324 specifies both the unit and decimal place to which the measurement should be conducted, rather than specifying significant figures, as proposed by DOE. DOE has determined that the approach used by ASTM F2324 more clearly specifies the required resolution and would avoid any potential confusion regarding resolution requirements when conducting measurements in different units (*i.e.,* measuring in liters versus gallons). The comments from PMI suggest that this convention is consistent with the current industry practices.

Accordingly, in this final rule, DOE is amending the requirements for fluid meter resolution to the following: When testing showerheads or non-metering faucets, ensure that the fluid meter has a resolution for flow rate of at least 0.1 gallons (0.4 liters) per minute. When testing a metering faucet, ensure that the fluid meter has a resolution for flow rate of at least 0.01 gallons (0.04 liters) per minute.

DOE notes that this language update only clarifies the intended resolution requirements from the May 2022 NOPR and is not a more stringent resolution than is currently required for certification. For example, a resolution requirement of two significant figures, as proposed in the May 2022 NOPR, would require flow rate to be measured to a resolution of 0.01 gpm, consistent with the resolution of at least 0.01 gallons (0.04 liters) per minute specified in this final rule.

In the May 2022 NOPR, DOE also proposed general instructions for measuring flow rate using the time/volume test method in ASME A112.18.1–2018. 87 FR 32351, 32358. DOE proposed that if the time/volume test is used: (1) the receiving container must be of sufficient size to contain all of the water for a single test and must have an opening size and/or partial cover, such that loss of water from splashing is minimized; and (2) the test must be conducted for a minimum of 1 minute and the time must be measured using a stopwatch with a minimum resolution of 0.1 seconds. DOE further proposed to clarify that measuring and recording the temperature of the water in this type of test requires a thermocouple or similar device and only the following two approaches are permissible: (1) At the receiving container immediately after recording the mass of water, or (2) at the water in the supply line any time during the duration of the time/volume test. In addition, DOE proposed to require measuring the mass of water to at least two significant figures and converting the mass to volume based on the specific gravity of water at the recorded temperature. *Id.* DOE tentatively determined that these proposed amendments would provide an accurate method for measuring flow rate and would reflect current testing practice, and therefore would not affect testing burden.

In response to DOE's proposal to require measuring the mass of water to at least two significant features, PMI commented that resolution of the measurement is the more meaningful specification. PMI commented that the density of water is 8.34 lbs./gal at 32 °F and that if 2.5 gallons of water is collected, it would weigh 20.85 lbs. PMI added that a measurement of 20.85 lbs is considered as four significant figures; when rounded to two significant figures the measurement would be 21 lbs. (PMI, No. 16 at p. 6)

Similar to previous discussion of resolution for fluid meters, DOE agrees with PMI's comment that resolution is a more meaningful specification for measuring the mass of water than the number of significant figures, as proposed by DOE. DOE notes that ASTM F2324 states that, when performing a test with the time/volume method, the analytical balance scale or equivalent device used when measuring the weight of the water carboy ''shall have a resolution of 0.01 lb. (5g).'' DOE has determined that the approach used by ASTM F2324 avoids potential ambiguity regarding the required resolution. For these reasons, in this final rule, DOE is amending the requirement for measuring the mass of water to the following: measure the mass of water to a resolution of at least 0.01 lb. (0.005 kg).

In the May 2022 NOPR, DOE proposed adding a new section 2.1 (renumbered as section 3.0 in this final rule) to appendix S titled ''General Instruction.'' 87 FR 32351, 23365. Within this section, DOE proposed to specify general instructions for the fluid meter test in a new subsection 2.1.1 (renumbered as section 3.1 in this final

rule), titled ''Fluid Meter Test Method,'' and for the time/volume test method in a new subsection 2.1.2 (renumbered as section 3.2 in this final rule), titled ''Time/Volume Test Method.'' *Id.*

In response to the May 2022 NOPR, DOE received several comments on the proposed title for subsection 2.1.1 (''Fluid Meter Test Method''; renumbered as section 3.1 in this final rule). Neoperl commented that it disagreed with DOE's proposed title because a fluid meter is a type of laboratory equipment and can be known by many different common names, such as flow gauge, flow indicator, liquid meter, or flow rate sensor. Neoperl recommended that the name of the test method should describe the purpose of the test, instead of the laboratory equipment. (Neoperl, No. 12 at p. 2)

ASA recommended that the term ''flow rate test'' be used instead of ''fluid meter test'' to be consistent with the ASME standard and to represent the purpose of the test rather than the device used. (ASA, No. 13 at p. 3)

PMI suggested revising the title of proposed section 2.1.1 (renumbered as section 3.1 in this final rule) from ''fluid meter test method'' to one of the following options that PMI asserted would more clearly express the intent of the instructions: ''Flow Test Method,'' ''Flow Rate Test Method,'' or ''Fluid Flow Indicator Test Method.'' PMI noted that several devices are capable of measuring the flow of water in a pipe at the necessary resolution and that in some cases, it may not be clear to the reader that the term flow meter as it is used in the title of the section is a general phrase intended to describe a device that measures the flow of water. (PMI, No. 16 at p. 5)

Having considered this feedback from stakeholders regarding the proposed section titles, in this final rule DOE is adopting updated titles to clarify, in the title, the purpose of the test: section 3.0 ''General Instruction for Measuring Flow Rate''; section 3.1 ''Using the Fluid Meter Method to Measure Flow Rate''; and section 3.2 ''Using the Time/Volume Method to Measure Flow Rate.''

DOE is also adding language to sections 3.1 and 3.2 to make more explicit that, although the term ''Fluid Meter Method'' is used in the title of section 3.1, the method provided in section 3.1 is relevant to all equipment and measures flow rate upstream of a showerhead or faucet. Similarly, the method provided in section 3.2 is relevant to all equipment used to measure flow rate downstream of a showerhead or faucet. Specifically, DOE is adding language within section 3.1 to specify that the section applies when measuring flow rate upstream of a showerhead or faucet using a fluid meter (or equivalent device) as described in section 5.4.2.2(c) of ASME A112.18.1. DOE is adding similar language within section 3.2 to specify that the method described in this subsection is relevant when measuring flow rate downstream of the showerhead or faucet as described in section 5.4.2.2(d) of ASME A112.18.1.

DOE did not receive any comments related to any of the other amendments to appendix S proposed in the May 2022 NOPR not specifically discussed in the preceding sections of this document. For the reasons discussed in the May 2022 NOPR, DOE is adopting those amendments as proposed.

D. Flow Restrictor Retention Test Method

The current standards for showerheads include a requirement that when used as a component of a showerhead, a flow-restricting insert must be mechanically retained at the point of manufacture such that a force of 8.0 pounds force (''lbf'') (36 Newtons) or more is required to remove the flow-restricting insert, except that this requirement does not apply to showerheads for which removal of the flow-restricting insert would cause water to leak significantly from areas other than the spray face. 10 CFR 430.32(p).

In the October 2013 Final Rule, DOE explained that it had considered establishing a test procedure for measuring the force required to remove a flow-restricting insert, but stated that further investigation of the issue was necessary and did not adopt a test procedure for flow-restrictor retention. 78 FR 62970, 62974. In the May 2022 NOPR, addressed comments received from stakeholders recommending that DOE propose a test method for flow restrictor retention to verify compliance with the flow restricting insert requirement. DOE noted in the May 2022 NOPR that ASME A112.18.1–2018 does not include any test method for showerhead flow retention. 87 FR 32351, 32359. DOE stated that a challenge in developing a test procedure is that there are numerous flow-restrictor configurations and there may not be one test method to suit all possible flow restrictors. *Id.* Given the variation in design, DOE tentatively concluded that such a test method may hinder product design. *Id.* Further, DOE stated that it did not have any indication that there is an issue in practice with customers removing flow-restriction devices. *Id.* For these reasons, DOE did not propose a test method for flow restrictor retention in the May 2022 NOPR.

In response to the May 2022 NOPR, the Joint Advocates recommended that DOE develop a test method for flow-restrictor retention for showerheads. The Joint Advocates stated that EPCA includes a requirement for the retention of flow restricting devices in the energy conservation standard for showerheads, noting that this requirement is as much a part of the standard as the maximum flow rate but that it had not been address in the test procedure or ASME A112.18.1–2018. The Joint Advocates commented that although DOE stated in the NOPR that it has no indication that customers are removing flow restricting devices, numerous online articles provide detailed instructions on easily removing flow restrictors. The Joint Advocates also commented that restrictors may be removed by installers in misguided attempts to satisfy customers. Further, the Joint Advocates stated that a lack of a test method is a particular concern for States that have adopted showerhead standards that are more stringent than the Federal standard. The Joint Advocates referenced showerhead manufacturers who provide 1.8 or 2.0 gpm showerheads with an optional 2.5 gpm flow restrictor in the box, stating that this creates a loophole in which compliance with State standards becomes the choice of the installer. Additionally, the Joint Advocates commented that flow restrictors serve a critical function, and their casual removal or replacement jeopardizes the effectiveness of the standard and its intended savings of energy and water. Finally, to accommodate the variety of showerhead designs, the Joint Advocates urged DOE to develop a typology of showerhead designs and removable flow-restriction devices and investigate one or more methods for measuring the force required for removal of flow restrictors. (Joint Advocates, No. 14 at pp. 2–3)

PMI agreed with DOE's tentative determination that a test method for flow restrictors should not be proposed, commenting that manufacturers of showerheads invest in research and development, prototypes, production, third-party certification, marketing, and distribution to produce a wide variety of showerheads that perform well to meet consumer needs and consumer satisfaction. Further, PMI commented that in many cases, flow restrictors are difficult to remove because the designs of the showerheads do not provide easy access for a tool to remove the flow restrictor. (PMI, No. 16 at p. 7)

Neoperl stated that it agrees with DOE that consumers do not remove flow restrictors from showerheads. Neoperl commented that consumers report satisfaction with showerhead performance. In addition, Neoperl commented that due to the numerous showerhead designs on the market, identification of the flow restrictor is often too difficult for a consumer. Neoperl stated that flow restrictors are difficult to remove because the flow restrictor designs lack sufficient surface area or protrusions onto which a tool can be fastened to facilitate removal of the flow restrictor. (Neoperl, No. 12 at p. 3)

ASA commented that it was not aware of any data supporting the removal of flow restrictors from showerheads. ASA stated that it would be opposed to DOE taking any action on this issue without field data to indicate there is a problem. (ASA, No. 13 at p. 3)

DOE notes that the Joint Advocates did not provide any data or other information that would inform the prevalence of flow restrictors being removed from a showerhead by consumers. DOE notes that the availability or prevalence of website articles that provide instructions on removing flow restrictors does not indicate the prevalence of such actions by consumers. Other stakeholder comments summarized in the preceding paragraphs indicate that removal of flow-restricting devices by consumers is uncommon in practice. Further, DOE has not received any comment or information to indicate that a test method for flow-restrictor retention could be implemented without impacting design flexibility. As such, DOE does not have sufficient reason to believe that establishing a test procedure for retention of flow-restricting devices is necessary to maintain the effectiveness of the applicable standard. Accordingly, in this final rule, DOE is not adopting a test procedure for flow-restrictor retention.

E. Clarification to 10 CFR 430.23 and Appendix S

10 CFR 430.23(s) and (t) provide the test procedures for the measurement of water consumption of faucets and showerheads, respectively. 10 CFR 430.23(s) requires that ''the maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of appendix S of this subpart.'' Similarly, 10 CFR 430.23(t) requires that ''the maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of appendix S of this subpart.'' [10]

In the May 2022 NOPR, DOE noted that the language ''*maximum permissible* water use'' [emphasis added] in the aforementioned sections is incorrect, as the test procedures measure *water use* [emphasis added]. The term ''maximum permissible water use'' is instead descriptive of a conservation standard. 87 FR 32351, 32359. Accordingly, DOE proposed to replace the language ''the maximum permissible water use allowed'' in 10 CFR 430.23(s) and 10 CFR 430.23(t) with ''the water use.'' *Id.* DOE explained that this amendment would clarify that the DOE test procedures measure water use, whereas the standards in 10 CFR 430.32(o) and (p) establish the maximum allowable water use for faucets and showerheads, respectively. *Id.*

Additionally, 10 CFR 430.23(s), 10 CFR 430.23(t), and appendix S state that water use should be expressed in ''gallons and liters per minute (gpm and L/min).'' In the May 2022 NOPR, DOE noted that this wording is unclear and could imply that manufacturers need to express results in both gpm and L/min, whereas manufacturers should instead express results in either gpm or L/min. 87 FR 32351, 32359. Accordingly, DOE proposed to replace the language ''gallons and liters per minute'' with ''gallons or liters per minute.'' *Id.*

ASA did not oppose replacing ''maximum permissible water use allowed'' with ''water use'' in 10 CFR 430.23(s) and (t) and replacing ''gallons and liters per minute'' with ''gallons or liters per minute'' in 10 CFR 430.23(s) and (t). (ASA, No. 13 at p. 3)

PMI commented that it agreed with DOE's determination to update language for faucets and showerheads to state that water use is expressed in gallons or liters per minute. PMI also supported the language updates for faucets and showerheads to replace ''maximum permissible water use allowed'' with ''water use.'' (PMI, No. 16 at p. 8)

For the reasons discussed in the May 2022 NOPR and summarized in the preceding paragraphs, DOE is incorporating these edits into 10 CFR 430.23(s), 10 CFR 430.23(t), and appendix S as proposed in the May 2022 NOPR.

F. Test Procedure Costs

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In the May 2022 NOPR, DOE tentatively determined that the proposed amendments would not impact testing costs and requested comment on this proposed determination. 87 FR 32351, 32359.

In response, ASA commented that it was not aware of potential costs to industry and small business based on the information provided by DOE, on the assumption that DOE accepts the comments expressed by ASA. (ASA, No. 13 at p. 3)

PMI commented that manufacturers are already testing products using ASME A112.18.1–2018 and therefore updating the reference in DOE's test procedure would not affect testing. (PMI, No. 16 at p. 4) PMI expressed caution regarding the development of additional requirements outside of existing standards because they are typically not developed under the ANSI essential requirements, which are generally reviewed, discussed, and approved by a balanced committee of stakeholders. (PMI, No. 16 at p. 8)

In this final rule, DOE amends the test procedures for faucets and showerheads to reference the most recent update to the relevant industry standard, ASME 112.18.1–2018. In addition, DOE is also amending certain definitions to clarify the scope of the test procedure and adding additional specifications on equipment and instrumentation, measurement precision, and calculation of flow rate consistent with current industry practice. The adopted amendments are consistent with current industry standards and would not impact the measured values of water use for faucets and showerheads under appendix S. As supported by stakeholder comments summarized in the preceding paragraphs, DOE has determined that these adopted amendments will not impact testing costs already experienced by manufacturers or be unduly burdensome for manufacturers to conduct.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency

[10] DOE notes that section 2(a) and section 2(b) have been renumbered as sections 2.1 and 2.2, respectively, in this final rule.

and energy use, or in the case of faucets and showerheads, water 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.*)

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 amended by 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.

In the May 2022 NOPR, DOE tentatively concluded that the impacts of the test procedure amendments contained in the NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an initial regulatory flexibility analysis (''IRFA'') was not warranted, and that DOE would transmit the certification and supporting statement of actual basis to the Chief Counsel for Advocacy of the small Business Administration for review. 87 FR 32351, 32361.

As stated, the amendments adopted in this final rule amend the test procedures for faucets and showerheads to reference the latest version of the industry standard, ASME A112.18.1–2018. In addition, DOE amends certain definitions to clarify the scope of the test procedure and add additional specifications on equipment and instrumentation, measurement precision, and calculation of flow rate consistent with current industry practice. DOE has determined that the adopted test procedure amendments would not impact testing costs already experienced by any manufacturers, including small business manufacturers.

The amendments adopted in this final rule would not have significant economic impact on small businesses. The Small Business Administration (''SBA'') considers a business entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulation use size standards codes established by the North American Industry Classification System (''NAICS'') that are available at: *www.sba.gov/document/support--table-size-standards*. Plumbing equipment manufacturers are classified under NAICS 332913 ''Plumbing Fixture Fitting and Trim Manufacturing,'' and NAICS 327110 ''Pottery, Ceramics, and Plumbing Fixture Manufacturing.'' The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered a small business within these categories.

For the same reasons discussed in the May 2022 NOPR, 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 faucets and showerheads 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 faucets and showerheads. (*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 faucets and showerheads in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for faucets and showerheads 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 faucets and showerheads. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *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 faucets and showerheads adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ASME A112.18.1–2018. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

ASME A112.18.1–2018 is an industry-accepted test standard that measures water consumption for faucets and showerheads, and is applicable to products sold in North America. Specifically, the test procedure codified by this final rule references section 5.4 ''Flow rate,'' which includes section 5.4.1 ''Supply fittings'' and section 5.4.2 ''Test procedure,'' which outline the procedures for testing and measuring water consumption, specifications for test apparatus, and other general requirements.

ASME A112.18.1–2018 is reasonably available from American Society of Mechanical Engineers at 2 Park Avenue, New York, NY 10016–5990, or by visiting *www.asme.org.*

V. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 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 16, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 17, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by revising the definition for ''Faucet'' and adding in alphabetical order definitions for ''Low-pressure water dispenser'' and ''Pot filler'' to read as follows:

§ 430.2 Definitions.

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet, excluding low-pressure water dispensers and pot fillers.

* * * * *

Low-pressure water dispenser means a terminal fitting that dispenses drinking water at a pressure of 105 kPA (15 psi) or less.

* * * * *

Pot filler means a terminal fitting that can accommodate only a single supply water inlet, with an articulated arm or the equivalent that allows the product to reach to fill vessels when in use and allows the product to be retracted when not in use.

* * * * *

■ 3. Section 430.3 is amended by revising paragraph (h)(1) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(1) ASME A112.18.1–2018/CSA B125.1–2018, (''ASME A112.18.1''), Plumbing supply fittings, CSA-published July 2018; IBR approved for appendix S to subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraphs (s) and (t) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(s) *Faucets.* Measure the water use for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, in gallons or liters per minute (gpm or L/min), in accordance to section 2.1 of appendix S of this subpart. Measure the water use for metering faucets, in gallons or liters per cycle (gal/cycle or L/cycle), in accordance to section 2.1 of appendix S of this subpart.

(t) *Showerheads.* Measure the water use for showerheads, in gallons or liters per minute (gpm or L/min), in accordance to section 2.2 of appendix S of this subpart.

* * * * *

■ 5. Appendix S to subpart B of part 430 is revised to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standards for faucets and showerheads at § 430.32(g)(o) and (p) as those standards appeared in January 1, 2023 edition of 10 CFR parts 200–499. Specifically, before November 20, 2023 representations must be based upon results generated either under this appendix as codified on June 23, 2023 or under this appendix as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2023. Any representations made on or after November 20, 2023 must be made based upon results generated using this appendix as codified on June 23, 2023.

0. Incorporation by Reference

In § 430.3, DOE incorporated by reference the entire standard for ASME A112.18.1; however, only enumerated provisions of ASME A112.18.1 apply to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard. Treat precatory language in ASME A112.18.1 as mandatory.

0.1 ASME A112.18.1:

(a) Section 5.4 ''Flow rate,'' including Figure 3 but excluding Table 1 and excluding sections 5.4.2.3.1(a) and (c), 5.4.2.3.2(b) and (c), and 5.4.3, as specified in section 2.1 and 2.2 of this appendix;

(b) Section 5.4.2.2(c), as specified in section 3.1 of this appendix.

(c) Section 5.4.2.2(d), as specified in sections 2.2 and 3.2 of this appendix.

0.2 [Reserved]

1. Scope

This appendix covers the test requirements to measure the hydraulic performance of faucets and showerheads.

2. Flow Capacity Requirements

2.1. Faucets—Measure the water flow rate for faucets, in gallons per minute (gpm) or liters per minute (L/min), or gallons per cycle (gal/cycle) or liters per cycle (L/cycle), in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME A112.18.1. Record measurements at the resolution of the test instrumentation. Round each calculation to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place for non-metered faucets, or two decimal places for metered faucets.

2.2. Showerheads—Measure the water flow rate for showerheads, in gallons per minute (gpm) or liters per minute (L/min), in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME A112.18.1. Record measurements at the resolution of the test instrumentation. Round each calculation to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place. If using the time/volume method of section 5.4.2.2(d), position the container to ensure it collects all water flowing from the showerhead, including any leakage from the ball joint.

3. General Instruction for Measuring Flow Rate

3.1. Using the Fluid Meter Method To Measure Flow Rate

When measuring flow rate upstream of a showerhead or faucet using a fluid meter (or equivalent device) as described in section 5.4.2.2(c) of ASME A112.18.1, ensure the fluid meter (or equivalent device) meets the following additional requirements. First, ensure the fluid meter is rated for the flow rate range of the product being tested. Second, when testing showerheads or non-metering faucets, ensure that the fluid meter has a resolution for flow rate of at least 0.1 gallons (0.4 liters) per minute. When testing a metering faucet, ensure that the fluid meter has a resolution for flow rate of at least 0.01 gallons (0.04 liters) per minute. Third, verify the fluid meter is calibrated in accordance with the manufacturer printed instructions.

3.2. Using the Time/Volume Method To Measure Flow Rate

There are several additional requirements when measuring flow rate downstream of a showerhead or faucet as described in section 5.4.2.2(d) of ASME A112.18.1 to measure flow rate. First, ensure the receiving container is large enough to contain all the water for a single test and has an opening size and/or a partial cover such that loss of water from splashing is minimized. Second, conduct the time/volume test for at least one minute, with the time recorded via a stopwatch with at least 0.1-second resolution. Third, measure and record the temperature of the water using a thermocouple or other similar device either at the receiving container immediately after recording the mass of water, or at the water in the supply line anytime during the duration of the time/volume test. Fourth, measure the mass of water to a resolution of at least 0.01 lb. (0.005 kg) and normalize it to gallons based on the specific gravity of water at the recorded temperature.

[FR Doc. 2023–10847 Filed 5–23–23; 8:45 am]

BILLING CODE 6450–01–P

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Chapter X

Consumer Financial Protection Circular 2023–02: Reopening Deposit Accounts That Consumers Previously Closed

AGENCY: Consumer Financial Protection Bureau.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) has issued Consumer Financial Protection Circular 2023–02, titled, ''Reopening Deposit Accounts That Consumers Previously

Closed.'' In this circular, the CFPB responds to the question, ''After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (*i.e.,* withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA)?''

DATES: The Bureau released this circular on its website on May 10, 2023.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Terry J. Randall, Senior Counsel for Policy and Strategy, Office of Enforcement, at (202) 435–9497. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process a debit (*i.e.,* withdrawal, ACH transaction, check) or deposit, can it constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA)?

Response

Yes. After consumers have closed deposit accounts, if a financial institution unilaterally reopens those accounts to process debits or deposits, it can constitute an unfair practice under the CFPA. This practice may impose substantial injury on consumers that that they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

Background

Consumers may elect to close a deposit account for a variety of reasons. For example, after moving to a new area, a consumer may elect to use a new account that they opened with a different financial institution that has a branch close to their new home. A consumer also might close an account because they are not satisfied with the account for another reason, such as the imposition of fees or the adequacy of customer service.

The process of closing a deposit account often takes time and effort. For example, closing an account typically involves taking steps to bring the account balance to zero at closure. The financial institution typically returns any funds remaining in the account to the consumer at closure and the consumer typically must pay any negative balance at closure. Some institutions require customers to provide a certain period of notice (*e.g.,* a week) prior to closing the account to provide time for the financial institution to process any pending debits or deposits. Deposit account agreements typically indicate that the financial institution may return any debits or deposits to the account that the financial institution receives after closure and faces no liability for failing to honor any debits or deposits received after closure.

Sometimes after a consumer completes all of the steps that the financial institution requires to initiate the process of closing a deposit account and the financial institution completes the request, the financial institution unilaterally reopens the closed account if the institution receives a debit or deposit to the closed account. Financial institutions sometimes reopen an account even if doing so would overdraw the account, causing the financial institution to impose overdraft and non-sufficient funds (NSF) fees. Financial institutions may also charge consumers account maintenance fees upon reopening, even if the consumers were not required to pay such fees prior to account closure (*e.g.,* because the account previously qualified to have the fees waived).

In addition to subjecting consumers to fees, when a financial institution processes a credit through an account that has reopened, the consumer's funds may become available to third parties, including third parties that do not have permission to access their funds.

The Consumer Financial Protection Bureau (CFPB) has brought an enforcement action regarding the practice of account reopening under the CFPA's prohibition against unfair, deceptive, or abusive practices.[1] The CFPB found that a financial institution engaged in an unfair practice by reopening deposit accounts consumers had previously closed without seeking prior authorization or providing timely notice. This practice of reopening closed deposit accounts caused some account balances to become negative and potentially subjected consumers to various fees, including overdraft and NSF fees. In addition, when the financial institution reopened an account to process a deposit, creditors had the opportunity to initiate debits to the account and draw down the funds, possibly resulting in a negative balance and the accumulation of fees. These practices resulted in hundreds of thousands of dollars in fees charged to consumers. The CFPB concluded that the institution's practice of reopening consumer accounts without obtaining consumers' prior authorization and providing timely notice caused substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

Analysis and Findings

A financial institution's unilateral reopening of deposit accounts that consumers previously closed can constitute a violation of the CFPA's probation on unfair acts or practices.[2]

Under the CFPA, an act or practice is unfair when it causes or is likely to cause consumers substantial injury that is not reasonably avoidable by consumers and the injury is not outweighed by countervailing benefits to consumers or to competition.[3]

Unilaterally reopening a closed deposit account to process a debit or deposit may cause substantial injury to consumers.

Substantial injury includes monetary harm, such as fees paid by consumers due to the unfair practice. Actual injury is not required; significant risk of concrete harm is sufficient.[4] Substantial injury can occur when a small amount of harm is imposed on a significant number of consumers.[5]

After a consumer has closed a deposit account, a financial institution's act of unilaterally reopening that account upon receiving a debit or deposit may cause monetary harm to the consumer. Financial institutions frequently charge fees after they reopen an account. For example, consumers may incur penalty

[1] USAA Federal Savings Bank, File No. 2019–BCFP–0001 (Jan. 3, 2019).

[2] Depending on the circumstances, reopening a closed deposit account may also implicate the CFPA's prohibition on deceptive or abusive acts or practices. 12 U.S.C. 5531, 5536. *See generally* ''Statement of Policy Regarding Prohibition on Abusive Acts or Practices,'' 88 FR 21883 (Apr. 12, 2023). This conduct may also violate other applicable laws, including State law. *See, e.g., Jimenez* v. *T.D. Bank, N.A.,* 2021 WL 4398754, at *16 (D.N.J., 2021) (private plaintiff stated a claim for unfair practices under Massachusetts law where bank allegedly ''either opened a new account in her name or reopened a previously closed account, without her knowledge and without seeking or obtaining her authorization'' and then charged her fees).

[3] 12 U.S.C. 5531(c)(1).

[4] *See, e.g., F.T.C.* v. *Wyndham Worldwide Corp.,* 799 F.3d 236, 246 (3d Cir. 2015) (interpreting ''substantial injury'' under the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45(n), which uses the same language as the CFPA, 12 U.S.C. 5531(c)(1)).

[5] *See, e.g., Orkin Exterminating Co.* v. *Fed. Trade Comm'n,* 849 F.2d 1354, 1365 (11th Cir. 1988) (interpreting ''substantial injury'' under the FTC Act).

fees [6] when an account that they closed is reopened by the financial institution after receiving a debit or deposit. Since financial institutions typically require a zero balance to close an account, reopening a closed account to process a debit is likely to result in consumers incurring penalty fees.

In addition to fees, reopening a consumer's account to accept a deposit increases the risk that an unauthorized third party may gain access to the consumer's funds (*e.g.,* a person with the consumer's account information who pulls funds from the account without the consumer's authorization).

And if reopening the account overdraws the account and the consumer does not repay the amount owed quickly, the financial institution may furnish negative information to consumer reporting companies, which may make it harder for the consumer to obtain a deposit account in the future. Because reopening accounts that the consumer closed gives rise to these risks of monetary harm, this practice may cause substantial injury.

Consumers likely cannot reasonably avoid this injury.

An injury is not reasonably avoidable by consumers when consumers cannot make informed decisions or take action to avoid that injury. Injury that occurs without a consumer's knowledge or consent, when consumers cannot reasonably anticipate the injury, or when there is no way to avoid the injury even if anticipated, is not reasonably avoidable.[7]

Consumers often cannot reasonably avoid the risk of substantial injury caused by financial institutions' practice of unilaterally reopening accounts that consumers previously closed because they cannot control one or more of the following circumstances: a third party's attempt to debit or deposit money, the process and timing of account closure, or the terms of the deposit account agreements.

First, without the consumer's consent or knowledge, a third party may attempt to debit from or deposit to the closed account, prompting their previous financial institution to reopen the account. For example, a payroll provider may inadvertently send a consumer's paycheck to the closed account, even if the consumer informed the payroll provider about the account closure and directed them to deposit their paycheck in a new account. Similarly, a merchant may take an extended amount of time to process a refund to a customer's account for a returned item or may use the wrong account information to process a recurring monthly payment. Consumers cannot reasonably avoid these types of injuries resulting from these types of actions by a third party.

Second, financial institutions may require consumers to complete a multi-step process before closing a deposit account, which can involve completing paperwork in person, returning or destroying any access devices, bringing the balance to zero, and fulfilling waiting periods. When consumers begin this process, they likely will not know exactly when the financial institution will fulfill their request to close the account. Consumers, for example, do not control waiting periods or the length of time it takes a financial institution to settle transactions to bring a balance to zero. Consumers' lack of control over the financial institution's account closure process and timeline may make it more difficult for them to prevent debits and credits that will reopen the account, since the account may close earlier than they expect.

Finally, consumers may not have a reasonable alternative to financial institutions that permit this practice because most deposit contracts either permit or are silent on this practice. Further, to the extent that deposit account agreements allow or disclose such practices, these agreements typically are standard-form contracts prepared by financial institutions that specify a fixed set of terms.[8] Consumers have no ability to negotiate the terms of these agreements. Instead, financial institutions present these contracts to consumers on a take-or-leave-it basis. Thus, even if deposit account agreements reference this practice, consumers also have limited ability to negotiate the terms of such contracts, and consumers can incur injuries in circumstances beyond their control. Moreover, even if the financial institution informs the consumer at the time that the account is closed that the institution may reopen the account, pursuant to the account agreement, the consumer will still generally lack the practical ability to control whether the account will be reopened and to avoid fees and other monetary harms.

This injury is likely not outweighed by countervailing benefits to consumers or competition.

Reopening a closed account does not appear to provide any meaningful benefits to consumers or competition. To the extent financial institutions are concerned about controlling their own costs to remain competitive, they have alternatives to reopening a closed account upon receiving a debit or deposit that could minimize their expenses and liability. For example, the financial institution could decline any transactions that they receive for accounts consumers previously closed. In addition to minimizing the institution's costs, not reopening these accounts may protect the financial institution against the use of closed accounts to commit fraud.

Moreover, consumers do not generally benefit when a financial institution unilaterally reopens an account that consumers previously closed. Since financial institutions typically require consumers to bring the account balance to zero before closing an account, reopening an account in response to a debit will likely result in penalty fees rather than payment of an amount owed by the consumer. While consumers might potentially benefit in some instances where their accounts are reopened to receive deposits, which then become available to them, that benefit does not outweigh the injuries that can be caused by unilateral account reopening. Such benefits are unlikely to be significant because consumers can generally receive the same deposits in another way that they would prefer (such as through a new account that they opened to replace the closed account). And those uncertain benefits are outweighed by the risk that deposited funds will be depleted before the consumer can access (or is even aware of) the funds (*e.g.,* through maintenance or other fees assessed by the financial institution as a result of the reopening or debits from the reopened account by third parties).

Further, not reopening accounts may benefit consumers in certain circumstances. For example, declining a deposit submitted to a closed account alerts the fund's sender that they have incorrect account information and may encourage the sender to contact the consumer to obtain updated account information. Declining a debit also provides an opportunity for the sender of the debit to inform the consumer of any erroneous account information, providing the consumer with the opportunity to make the payment with

[6] In these circumstances, because there generally are no benefits to charging fees on reopened accounts (see countervailing benefits discussion below), such fees generally would function as penalty fees which cause substantial injury.

[7] *See FTC* v. *Neovi, Inc.,* 604 F.3d 1150, 1158 (9th Cir. 2010) (interpreting whether consumer's injuries were reasonably avoidable under the FTC Act); *Orkin Exterminating Co.,* 849 F.2d at 1365–66 (same); *American Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 976 (D.C. Cir. 1985) (same).

[8] *See American Fin. Servs. Ass'n,* 767 F.2d at 977 (concluding that certain practices were unfair even though disclosed and agreed to in agreements because consumers had no ability to negotiate the terms of form contracts).

a current account or through another process.

For these reasons, government enforcers should consider whether a financial institution has violated the prohibition against unfair acts or practices in the CFPA if they discover that a financial institution has unilaterally reopened accounts that consumers previously

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other ''enumerated consumer laws,'' 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.,* 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with $10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

Consumer Financial Protection Circulars are intended to promote consistency in approach across the various enforcement agencies and parties, pursuant to the CFPB's statutory objective to ensure Federal consumer financial law is enforced consistently. 12 U.S.C. 5511(b)(4).

Consumer Financial Protection Circulars are also intended to provide transparency to partner agencies regarding the CFPB's intended approach when cooperating in enforcement actions. *See, e.g.,* 12 U.S.C. 5552(b) (consultation with CFPB by State attorneys general and regulators); 12 U.S.C. 5562(a) (joint investigatory work between CFPB and other agencies).

Consumer Financial Protection Circulars are general statements of policy under the Administrative Procedure Act. 5 U.S.C. 553(b). They provide background information about applicable law, articulate considerations relevant to the Bureau's exercise of its authorities, and, in the interest of maintaining consistency, advise other parties with authority to enforce Federal consumer financial law. They do not restrict the Bureau's exercise of its authorities, impose any legal requirements on external parties, or create or confer any rights on external parties that could be enforceable in any administrative or civil proceeding. The CFPB Director is instructing CFPB staff as described herein, and the CFPB will then make final decisions on individual matters based on an assessment of the factual record, applicable law, and factors relevant to prosecutorial discretion.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–10982 Filed 5–23–23; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2023–0068; Special Conditions No. 25–821–SC]

Special Conditions: B/E Aerospace Ltd., MHI RJ Aviation ULC Model CL–600–2B19 Airplane; Installation of a Therapeutic Oxygen System for Medical Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the MHI RJ Aviation ULC Model CL–600–2B19 airplane. This airplane, as modified by B/E Aerospace Ltd. (B/E Aerospace), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an installation of a therapeutic oxygen system for medical use. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on B/E Aerospace Ltd. on May 24, 2023. Send comments on or before July 10, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2023–0068 using any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Mechanical Systems, AIR–623, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3171; email *robert.hettman@faa.gov.*

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

Comments Invited

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

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so

without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Background

On November 17, 2022, B/E Aerospace applied for a supplemental type certificate for the modification of the oxygen distribution system on the MHI RJ Aviation ULC Model CL–600–2B19 airplane (type certificate previously held by Bombardier, Inc). This airplane, which is currently approved under Type Certificate A21EA–1, is a twin-engine transport category airplane with a maximum takeoff weight of 47,450 pounds. The Model CL–600–2B19 (Challenger 850 series) airplane has a seating capacity of 19 passengers.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, B/E Aerospace must show that the MHI RJ Aviation ULC Model CL–600–2B19 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A21EA–1 or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the MHI RJ Aviation ULC Model CL–600–2B19 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the MHI RJ Aviation ULC Model CL–600–2B19 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

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

Novel or Unusual Design Features

The MHI RJ Aviation ULC Model CL–600–2B19 airplane will incorporate the following novel or unusual design feature:

A modification of the oxygen-distribution system that affects how the common source of oxygen supply on board is shared between the flightcrew and passengers to provide supplemental and therapeutic oxygen.

Discussion

No specific regulations address the design and installation of required passenger oxygen systems that share a supply source with an optional oxygen system used specifically for therapeutic applications. Therapeutic oxygen systems have been previously certified, and were generally considered an extension of the passenger oxygen system for the purpose of defining the applicable regulations. As a result, existing requirements, such as §§ 25.1309, 25.1441(b) and (c), 25.1451, and 25.1453, in the MHI RJ Aviation ULC Model CL–600–2B19 airplanes' certification basis applicable to this STC project, provide some design standards appropriate for oxygen system installations. In addition, § 25.1445 includes standards for oxygen distribution systems when oxygen is supplied to flightcrew and passengers. If a common source of supply is used, § 25.1445(a)(2) requires a means to separately reserve the minimum supply required by the flightcrew.

Section 25.1445 is intended to protect the flightcrew by ensuring that an adequate supply of oxygen is available to complete a descent and landing following a loss of cabin pressure. When the regulation was written, the only passenger oxygen system designs were supplemental oxygen systems intended to protect passengers from hypoxia in the event of a decompression. Existing passenger oxygen systems did not include design features that would allow the flightcrew to control oxygen to passengers during flight. There are no similar requirements in § 25.1445 when oxygen is supplied from the same source to passengers for use during a decompression, and for discretionary or first-aid use any time during the flight. In the design, the passenger and therapeutic oxygen systems use the same source of oxygen. These special conditions contain additional design requirements for the equipment involved in this dual therapeutic oxygen plus gaseous oxygen installation.

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

Applicability

As discussed above, these special conditions are applicable to the MHI RJ Aviation ULC Model CL–600–2B19 airplane. Should B/E Aerospace apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A21EA–1 to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for MHI RJ Aviation ULC Model CL–600–2B19 airplanes, as modified by B/E Aerospace Ltd.

The distribution system for the passenger therapeutic oxygen system must be designed and installed to meet requirements as follows:

When oxygen is supplied to passengers for both supplemental and therapeutic purposes, the distribution system must be designed for either—

(1) A source of supplemental oxygen for protection following a loss of cabin pressure, and a separate source for therapeutic purposes; or

(2) A common source of supply with means to separately reserve the minimum supply required by the passengers for supplemental use following a loss of cabin pressure.

Issued in Kansas City, Missouri, on May 18, 2023.

Patrick R. Mullen,

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

[FR Doc. 2023–10987 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2022–N–2898]

Food Labeling, Infant Formula Requirements, Food Additives and Generally Recognized as Safe Substances, New Dietary Ingredient Notification; Technical Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule entitled ''Food Labeling, Infant Formula Requirements, Food Additives and Generally Recognized as Safe Substances, New Dietary Ingredient Notification; Technical Amendments'' that appeared in the **Federal Register** of March 24, 2023. The final rule corrected typographical errors, corrected errors in sample labels, restored inadvertent omissions, and updated office and organization names, addresses, and other references. The document was published with an incorrect abbreviation to ''Potassium'' in the codified language. This document corrects that error.

DATES: Effective May 24, 2023.

FOR FURTHER INFORMATION CONTACT: Mark Kantor, Office of Nutrition and Food Labeling (HFS–830), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450; or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Friday, March 24, 2023 (88 FR 17710 at 17718), an incorrect abbreviation to ''Potassium'' appeared in § 101.9(j)(13)(ii)(B) of the codified language. This document corrects that error.

List of Subjects in 21 CFR Part 101

Food Labeling, Nutrition, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FDA is correcting 21 CFR part 101 with the following correcting amendment:

PART 101—FOOD LABELING

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.9 [Amended]

■ 2. In § 101.9, amend paragraph (j)(13)(ii)(B) by removing ''Potassium—Pot.'' and replacing it with ''Potassium—Potas.''.

Dated: May 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10602 Filed 5–23–23; 8:45 am]

BILLING CODE 4164–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 18–122; GN Docket No. 23–97; DA 23–408; FR ID 141458]

Wireless Telecommunications Bureau Announces C-Band Phase II Certification Procedures

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces the procedures related to the filing of Phase II Certifications of Accelerated Relocation (Certifications) and implements the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments (ARPs) as part of the ongoing transition of the 3.7 GHz band.

DATES: Effective June 1, 2023.

ADDRESSES: Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Susan Mort of the Wireless Telecommunications Bureau, at (202) 418–2429 or *Susan.Mort@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the document, *Wireless Telecommunications Bureau Announces Procedures for Filing of C-Band Phase II Certifications of Accelerated Relocation and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments,* released on May 15, 2023. The full text of this document is available for public inspection online at *https://docs.fcc.gov/public/attachments/DA-23-408A1.pdf*.

1. With this document, the Bureau adopts filing procedures for the submission of Phase II Certifications, as proposed in *C-Band Phase II Certification of Accelerated Relocation Procedures and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Public Notice* (Phase II Certification Procedures and Incremental Reduction Comment PN), released in March 2023 in this proceeding (88 FR 16932, Mar. 21, 2023). These procedures are modeled after those previously adopted for Phase I to allow eligible space station operators to submit Certifications, and stakeholders to file related challenges, with respect to the

Phase II migration of incumbent services in this band. The Bureau modified these requirements in response to the record in this proceeding, adopting a standardized Certification format proposed by the eligible space station operators in order to streamline the processing and review of the Certifications. The Bureau adopted June 1, 2023 as the date on which Certifications may be filed. In order to ensure this timeline is satisfied, these rules will be effective on June 1, 2023, rather than 30 days after publication.

2. With respect to the Phase II incremental reduction plan, the Bureau adopted an approach that parallels the Phase I process for calculating the incremental reduction of an eligible space station operator's ARP should it fail to meet the Phase II Accelerated Relocation Deadline, as proposed.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–10807 Filed 5–23–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 88, No. 100
Wednesday, May 24, 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 AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Chapter XLII

[Docket #: RBS–23–BUSINESS–0006]

RIN 0570–AB10

Rural Business Development Grant (RBDG) Regulation: Tribes and Tribal Business References To Provide Equitable Access

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business Development Grant (RBDG) Program is intended for governmental entities and non-profits that foster economic development, job creation and business creation in rural and Tribal communities. Eligible applicants for RBDG assistance include rural towns, communities, State agencies, authorities, nonprofit corporations, institutions of higher education, Federally recognized Tribes (*https://www.bia.gov/service/tribal-leaders-directory*) and cooperatives (if organized as a private nonprofit corporation). USDA intends to improve Tribal Government participation in the program. This proposed rule seeks to increase Tribal Government participation with programmatic amendments.

DATES: Comments must be submitted on or before July 24, 2023.

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking Portal at *https://www.regulations.gov/* and in the ''Search Documents'' box, enter the Docket # (RBS–23–BUSINESS–0006) or the RIN # (0570–AB10) of this proposed rule, and click the ''Search'' button. To submit a comment, select the ''Comment'' button associated with the proposed rule. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available by selecting ''FAQ'' at the bottom of the page.

Additional information about RBDG is available at *https://www.rd.usda.gov/programs-services/business-programs/rural-business-development-grants.*

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Will Dodson, Branch Chief, Intermediary Programs, Program Management Division, Rural Business-Cooperative Service, 1400 Independence Ave. SW, Stop 3201, Washington, DC 20250; telephone, 202–690–4730; email, *will.dodson@usda.gov.* Persons with disabilities that require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or 711 Relay Service.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2015, Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the USDA, published an interim final rule with comment, 80 FR 15665, for the RBDG Program. The interim final rule with comment ensured the Agency had a regulation in place to meet the Congressional mandate established in the Agricultural Act of 2014 (2014 Farm Bill). The RBDG Program is targeted at public governmental entities, including Tribal Governments, and non-profit entities, which in turn empower business and market development. However, following implementation of the interim final rule, the Agency received regular feedback through Tribal consultation that the interim final rule did not adequately define and address how Tribes legally structure their businesses and related enterprises as arms or instrumentalities of Tribes. The Program did not previously identify tribally-owned businesses separate from Tribal Governments. This nuance effectively prevented full access to participation for Tribes and Tribally owned businesses.

Tribal Governments do not maintain a tax base, therefore, Tribes often establish corporate or other business entities as government arms or instrumentalities to provide for a public (Tribal) good or generate revenue for the provision of public (Tribal) goods by the Tribal Government. These Tribal Government entities often significantly contribute to their local economy through employment of Tribal and non-Tribal members (non-Tribal United States citizens), job training and advancement opportunities, and by filling gaps in commerce across Tribal lands that are often food, economic, and credit deserts. The Federal Government maintains a treaty and trust responsibility to provide for economic self-sufficiency among Indian Tribes.

Consistent input from Tribal Governments and Tribal stakeholders indicated that the RBDG Program has experienced reduced participation of Tribal Governments and Tribal entities, since inception of the Program. This reduction in participation is due to policies that have not fully considered or included the range of strategies that Tribal nations employ to build Tribal markets and economies through government arms and instrumentalities. Historically, Tribes have not fully utilized the RBDG Program due to Agency policy, which does not adequately consider the range of entities that Tribal nations incorporate, specifically, entities that are Tribal Government owned and operated to foster economic development and promote meaningful employment, while also generating revenue for the Tribal Government. The complex legal and political structure and nature of Tribal nations and these Tribal entities necessitates a close relationship between both entities with ownership and control remaining with the Tribal Governments. The amendments update and codify the Agency's policy regarding Tribal nations and their Tribal owned entities.

II. Summary of Changes to the Rule

Administrative Change

The RBDG Program (7 CFR part 4280) is currently listed under chapter XLII, Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture, along with Direct and Insured Loanmaking (7 CFR part 4274), Guaranteed Loanmaking (7 CFR part 4279), Grants (7 CFR part 4284), Cooperative Agreements (7 CFR part 4285), Servicing (7 CFR part 4287), Payment Programs (7 CFR part 4288), and Rural Business Investment Company (''RBIC'') Program (part 7 CFR

part 4290). This proposed rule will update the ownership of chapter XLII to remove Rural Utilities Service as these programs are all under RBCS exclusively.

Section 4280.403 Definitions

The definitions section is being revised to add and revise definitions.

Conflict of Interest. The *Conflict of interest* definition is added to codify the Agency's interpretation of the relationship of Tribal nations and their Tribal owned entities to expand eligibility opportunities for Tribal applicants.

Indian Tribe (Tribal). The current operating definition for *Indian Tribe (Tribal)* is being revised to *Indian Tribe (Tribal), Tribal Government, and/or Federally Recognized Tribes.* Historically, the Program has utilized the list of Federally Recognized Tribes published by the Bureau of Indian Affairs to determine if a Tribe was eligible to directly apply for RBDG assistance. No change to the current policy is being implemented and the statutory cite for this policy will now be included within the regulation. Eligible applicants for RBDG assistance continue to be rural Towns, Communities, State agencies, Authorities, Nonprofit corporations, Institutions of higher education, Federally Recognized Tribes (*https://www.bia.gov/service/tribal-leaders-directory*) and cooperatives (if organized as a private nonprofit corporation).

Small and Emerging Business. The *Small and Emerging Business* definition is being revised to add language to clarify the relationship of Tribal Governments and Tribal owned entities. Specifically, the management and Board of Directors of the Tribal government owned entity or business do not have to be independent of the Tribal Council. Language has also been added to clarify that the asset and employee size limitations to qualify as a small and emerging business are limited to the Tribal entity that is applying for assistance and is not intended to be inclusive of all Tribal assets or all Tribal employees. Consequently, it is anticipated that required financial documentation required for Program participation will be limited to the immediate Tribal entity that is applying for the assistance and not required for the Tribe or its other Tribal entities, unless the Tribe itself is the applicant. These amendments were made in accordance with direct Tribal input conducted through Tribal consultation and will improve Tribal Government accessibility to both the regular RBDG Program and RBDG funds appropriated specifically to support projects that benefit Federally Recognized Tribes and their members.

Section 4280.500 OMB Control Number

On March 25, 2015, RBCS published an interim final rule with comment for the RBDG Program, 80 FR 15665, that assigned Office of Management and Budget (OMB) control numbers 0570–0022 and 0570–0024 in accordance with the Paperwork Reduction Act of 1995 (PRA). OMB control numbers 0570–0022 and 0570–0024 have been discontinued as of 2016. A new collection package in accordance with PRA was issued in 2016 and the new OMB control number is 0570–0070.

III. Executive Orders/Acts

Executive Order 12866—Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this proposed rule as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Number assigned to the RBDG Program is 10.351. The Assistance Listings are available on the internet at *https://sam.gov/.*

Executive Order 12372—Intergovernmental Consultation

This program is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RBCS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C. However, Tribes and Tribal entities as defined in this proposed rule are exempt of this requirement.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens under OMB control number 0570–0070 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this proposed rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action,'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. The APA exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this proposed rule.

Executive Order 12988—Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this proposed rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandate Reform Act (UMRA)

Title II of the UMRA, Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal Governments and on the private sector. Under section 202 of the UMRA, Federal Agencies generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that

may result in expenditures to State, local, or Tribal Governments, in the aggregate, or to the private sector, of $100 million or more in any one-year. When such a statement is needed for a rule, section 205 of the UMRA generally requires a Federal agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal Governments or for the private sector. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

It has been determined, under E.O. 13132, Federalism, that the policies contained in this proposed rule do not have any substantial direct effect on 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. Nor does this proposed rule impose substantial direct compliance costs on State and local Governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

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

RBCS has determined that the rule does have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes but reflects a remedy to RBDG Tribal barriers identified in Tribal consultation, including recent Tribal consultations on equity hosted in March 2021 and April 2022. USDA will hold an additional follow-up Tribal consultation for input during the 60-day comment period. Additionally, if a Tribe requests Government-to-Government consultation regarding this rule, the Agency will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided. Interested Tribal leaders are encouraged to contact the Office of Tribal Relations or RD's Tribal Coordinator at *AIAN@usda.gov* to request such a consultation.

E-Government Act Compliance

Rural Development is committed to the E-Government Act of 2002, Public Law 107–347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. Based on the review and analysis of the proposed rule and all available data, issuance of this proposal is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

USDA Non-Discrimination Statement

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible mission area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

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List of Subjects in 7 CFR Part 4280

Business and industry, Energy, Grant programs—business, Loan programs—business, and Rural areas.

For the reasons discussed in the preamble, 7 CFR chapter XLII is amended as follows:

■ 1. Under the authority of 5 U.S.C. 301 and 7 U.S.C. 1989, the heading for chapter XLII is revised to read as follows:

Chapter XLII Rural Business-Cooperative Service, Department of Agriculture

PART 4280—LOANS AND GRANTS

■ 2. The authority citation for part 4280 is revised to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2008s

Subpart E—Rural Business Development Grants

■ 3. Amend § 4280.403 by:

a. Adding ''Conflict of interest'' in alphabetical order and revising ''Indian Tribe (Tribal)'' and ''Small and Emerging Business''. The addition and revisions read as follows:

§ 4280.403 Definitions.

* * * * *

Conflict of Interest. When the grantee's employees, Board of Directors, or their immediate families have a legal or personal financial interest in the recipient(s) receiving the benefits or services of the grant. Tribal Governments, subdivisions of Tribal Governments (chapters, districts, authorities, townships, etc.), and Tribal arms and instrumentalities, entities wholly-owned and chartered by Tribal Governments including but not limited to: Tribal owned corporations (including Section 17 Corporations, Community Development Corporations and Economic Development Corporations), Tribal owned businesses, Tribal owned authorities, Tribal owned utilities, other Tribally owned enterprises and their subsidiaries will not be considered as having a conflict of interest due to their, or their Board's, ties to their associated Tribe or each other.

* * * * *

Indian Tribe (Tribal), Tribal Government and/or Federally Recognized Tribes. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454).

* * * * *

Small and Emerging Business. Any private and/or nonprofit business which will employ 50 or fewer new employees and has less than $1 million in gross revenue; for retail operations, gross revenue may be reduced by cost of goods sold and returns or for a service organization, gross revenue may be reduced by the cost of providing service or for a manufacturing operation, gross revenue may be reduced by the cost of raw materials and the cost of production. The $1 million gross revenue and 50 or fewer new employee thresholds apply only to each individual Tribal owned enterprise applicant or recipient. Due to the unique structuring of Tribal economic development, the revenue or employees of the Tribe and/or parent Tribal enterprise will not apply towards the individual Tribal enterprise applicant or recipient, regardless of shared ownership or Directors. The revenue of Tribes, subdivisions of Tribes and Tribal entity applicants, will not be considered revenue in determining program and project eligibility.

* * * * *

■ 4. Revise § 4280.500 to read as follows:

§ 4280.500 OMB control number.

The reporting and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0570–0070 in accordance with the Paperwork Reduction Act of 1995. You are not required to respond to this collection of information unless it displays a valid OMB control number.

Karama Neal,

Administrator, Rural Business-Cooperative Service, USDA Rural Development.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–10631 Filed 5–23–23; 8:45 am]

BILLING CODE 3410–XY–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2022–0893; FRL–10419–01–R10]

Air Plan Approval; AK; Revisions to Ice Fog and Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Alaska State Implementation Plan (SIP) submitted on May 16, 2022. In the submission, Alaska revised and repealed state regulations originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska. Alaska determined that the regulations are now obsolete due to technology improvements and regulatory changes, including Federal sulfur content in fuel restrictions, and Alaska requested that the SIP be updated to reflect the revised and repealed state regulations. We propose to find that the submitted revision will not interfere with attainment of the national ambient air quality standards or other applicable requirements of the Clean Air Act.

DATES: Comments must be received on or before June 23, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2022–0893, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–6357 or *hall.kristin@epa.gov*.

SUPPLEMENTARY INFORMATION: In this document, ''we'' and ''our'' mean the EPA.

Table of Contents

I. Background

Each state has a State Implementation Plan (SIP) containing the air pollution control measures and strategies used to meet the national ambient air quality standards. These standards are established by the EPA for the criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide (SO_2). The SIP contains elements such as emission limits, pollution control technology requirements, monitoring networks, and enforcement mechanisms, among other elements. The SIP is a living compilation revised by the state over time to address changing air quality conditions.

As the primary government entity charged with controlling air pollution in the state, the Alaska Department of Environmental Conservation (DEC) generally establishes state air regulations in the Alaska Administrative Code, Title 18, Chapter 50 (18 AAC 50). The Alaska DEC then submits state regulations to the EPA for review and approval. Through notice and comment rulemaking, the EPA approves and incorporates the state regulations by reference into the Alaska SIP in the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart C. As part of the SIP, the state regulations are enforceable by the EPA, and by citizens in Federal district court.[1]

II. Evaluation of Submission

On May 16, 2022, Alaska submitted a SIP revision to the EPA. In the submission, the state revised and repealed certain air quality regulations and requested to update the federally approved SIP.[2] Alaska determined that the regulations, originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska are now obsolete due to technology improvements and regulatory changes. Alaska requested that the SIP be updated to reflect the revised and repealed state regulations. Alaska provided background and supporting information in the submission. We have included the full submission in the docket for this action. The following paragraphs of this preamble summarize our evaluation.

A. Ice Fog Provisions

Ice fog is made up of tiny ice crystals that form in the air under extremely cold conditions. The original 1972 Alaska SIP included a chapter on ice fog because, at the time, water vapor from cooling ponds, industrial processes, motor vehicles and other sources contributed to regular ice fog events that caused dangerous road conditions and other public safety hazards. The original Alaska SIP also included a regulation [3] to address industrial sources of water vapor emissions. The regulation, currently codified at 18 AAC 50.080, stated that the Alaska DEC may require a person who proposes to build or operate an industrial process, fuel-burning equipment, or incinerator in an area of potential ice fog to obtain a permit and to reduce water vapor emissions.

The Alaska DEC determined that the ice fog chapter and regulation are no longer needed. The submission, included in the docket for this action, stated that, in the 50 years since establishing the ice fog provisions, improved technologies have reduced water vapor emissions from industrial processes and equipment. The submission further stated that ice fog prevention measures are required in only a handful of permits issued to older industrial turbines in interior Alaska that use water injection as a nitrogen oxide control measure. To address these limited situations, the Alaska DEC retains authority under a separate regulation, 18 AAC 50.110,[4] to limit water vapor emissions and prevent ice fog events.

The EPA may approve a state's request to revise or remove a provision from the federally approved SIP as long as the SIP revision would not interfere with any applicable requirement concerning attainment of the national ambient air quality standards, reasonable further progress toward achieving those standards, or other applicable requirements of the Clean Air Act. We have reviewed the submission and propose to approve the request to remove the ice fog chapter and regulation from the SIP for two reasons. First, we propose to find that the ice fog regulation at 18 AAC 50.090 is redundant. The submission stated that the Alaska DEC may employ a different SIP-approved regulation, 18 AAC 50.110, to prevent ice fog events. Second, the ice fog chapter and regulation address water vapor emissions. Water vapor is not a criteria pollutant, precursor to a criteria pollutant, or an additional pollutant required to be regulated under the SIP and Clean Air Act section 110 and part C of title I. Removal of this water vapor provision will not impact air pollution control requirements for the control of criteria pollutants. Therefore, we propose to find that removing the ice fog chapter and regulation from the SIP will not interfere with any applicable requirement concerning attainment of the national ambient air quality standards, reasonable further progress toward achieving those standards, or other applicable requirements of the Clean Air Act.

B. Sulfur Dioxide Provisions

In 1997, Alaska established two SO_2 special protection areas around the island fishing communities of Unalaska and St. Paul Island.[5] The submission, included in the docket for this action, stated that marine vessels and on-shore industrial facilities in these areas historically burned large quantities of high-sulfur fuel oil, as high as 50,000 parts per million (ppm) sulfur content, or 5% sulfur by weight. International treaty governs the sulfur content of commercial marine fuel and, at the time Alaska established the SO_2 special protection areas, allowed for the widespread burning of high-sulfur fuel oil known as bunker fuel.

Lacking the authority to limit the sulfur content of commercial marine fuel burned by vessels transiting near Alaska, the Alaska DEC established SO_2 special protection areas around Unalaska and St. Paul Island. Within these special protection areas, Alaska imposed additional minor source permitting requirements on certain sources. Specifically, the Alaska DEC required each emissions unit with a rated capacity of 10 million British thermal units (BTUs) or more per hour to obtain a minor source permit prior to beginning actual construction.[6] This requirement was in addition to the current state-wide requirement for each new stationary source with the potential to emit (PTE) SO_2 greater than 40 tons per year to obtain a minor source permit prior to beginning actual construction.[7]

Additionally, each applicant for a minor source permit in a special protection area was required to provide

[1] See citizen suit provision at Clean Air Act section 304.

[2] The submission also updated the state's adoption by reference of Federal air quality standards and test methods codified at 18 AAC 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

[3] 18 AAC 50.090, state effective May 26, 1972. We note that this regulation was renumbered from 18 AAC 50.090 to 18 AAC 50.080, state effective January 18, 1997.

[4] 18 AAC 50.110 prohibits any emission injurious to health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property. It is also part of the federally approved Alaska SIP.

[5] Unalaska, population 4,254, is the largest community in the Aleutian Islands chain. It is home to Dutch Harbor, main port to the Bering Sea fishery. St. Paul Island, population 413, is the largest of the Pribilof Islands, approximately 300 miles off the mainland in the Bering Sea. Both communities are located in the Aleutians West Census Area. See U.S. Census Bureau Data for Alaska, 2020. Available at *https://live.laborstats.alaska.gov/cen/hist.html.* See also Aleutians West Census Area map at *https://live.laborstats.alaska.gov/cen/maps/bor/current/016.pdf.*

[6] Previously 18 AAC 50.502(c)(2)(B).

[7] 18 AAC 50.502(c)(1)(C).

a demonstration that the proposed potential SO_2 emissions from the stationary source would not result in a violation of the state-adopted SO_2 national ambient air quality standard (NAAQS).[8] Finally, each source proposed to be constructed in a special protection area was ineligible for the Alaska DEC's streamlined minor source permitting process. This SIP-approved process provides the public with notice and an opportunity to request a public comment period, however, if no member of the public makes such a request, a full comment period is not held.[9]

Since 1997, there have been significant restrictions on sulfur in marine fuel. In 2010, the International Marine Organization (IMO) established emission standards for vessels operating in designated waters off the coast of North America.[10] The North American Emissions Control Area (ECA) covers most coastal areas of the United States, including southeast Alaska and the Gulf of Alaska. Vessels operating in the area must burn low sulfur marine fuel, 1,000 ppm sulfur content (0.10% sulfur by weight). Notably, the North American ECA does not extend to Unalaska and St. Paul Island, however, as of January 1, 2020, the IMO limited sulfur in fuel for ships operating outside designated ECAs to 5,000 ppm sulfur content (0.50% sulfur by weight).[11] This limit represents a substantial reduction from the prior IMO limit of 35,000 ppm sulfur content (3.5% sulfur by weight).

As stated in the submission, the Alaska DEC's assessment is that most vessels transiting shipping routes near Unalaska and St. Paul Island are now burning 5,000 ppm sulfur content fuel or less, an estimated seven-fold decrease from the prior IMO limit of 35,000 ppm sulfur content fuel. Therefore, any associated emissions increase due to removal of the SO_2 special protection area permit process requirements would be more than offset by the reduction in SO_2 emissions from this change in the Federal sulfur content of fuel standards. The submission requested to remove the rule denoting the two sulfur dioxide special protection areas, 18 AAC 50.025(c), and associated cross-references to minor stationary source permitting rules, from the Alaska SIP.[12]

The EPA may approve a state's request to revise or remove a provision from the federally approved SIP as long as the SIP revision would not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress toward achieving those standards, or other applicable requirements of the Clean Air Act.[13] We propose to approve the submitted changes for the following reasons. First, existing Federal sulfur content of fuel standards are adequate substitutes for the additional minor source permitting requirements in the SO_2 special protection areas because the existing Federal standards will achieve equivalent or greater emissions reductions. The National Emissions Inventory (NEI) data presented in Table 1 of this preamble confirms that the commercial marine vessel sector is the largest sulfur dioxide-emitting sector in the census area that encompasses Unalaska and St. Paul Island.

Second, the data in Table 1 of this preamble suggests that sulfur dioxide emissions from industrial fuel combustion in the census area is low. It is reasonable to conclude that the EPA's regulations limiting the sulfur content of marine diesel will greatly reduce emissions from the largest source of SO_2 pollution.[14] Alaska does not rely on these emission reductions for credit towards attainment, maintenance, or reasonable further progress purposes in this geographic area. We note, however, that it is difficult to evaluate NEI data for potential trends from year to year because the protocols for estimating emissions change over time. For example, between 2014 and 2017, the EPA significantly changed its protocol for estimating marine vessel emissions and as a result, commercial marine vessel emissions data for 2017 is not directly comparable to prior years.[15]

TABLE 1—SULFUR DIOXIDE EMISSIONS IN ALEUTIANS WEST CENSUS AREA

[Tons per year] [16]

Sector [17]	2008	2011	2014	2017
Fuel Comb—Comm/Institutional—Oil	4	4	3	1
Fuel Comb—Comm/Institutional—Other	0	1	1	0
Fuel Comb—Electric Generation—Oil	51	15	11	15
Fuel Comb—Industrial Boilers, ICEs—Coal	0	0	0	1
Fuel Comb—Industrial Boilers, ICEs—Natural Gas	0	0	0	1
Fuel Comb—Industrial Boilers, ICEs—Oil	36	14	1	1
Fuel Comb—Industrial Boilers, ICEs—Other	1	0	0	0
Fuel Comb—Residential—Oil	24	17	12	0
Fuel Comb—Residential—Other	0	1	0	0
Fuel Comb—Residential—Wood	0	0	0	1
Industrial Processes—Not Elsewhere Classified	2	0	0	0
Mobile—Aircraft	1	1	3	3
Mobile—Commercial Marine Vessels	41	116	71	[18] 1,119
Mobile—Non-Road Equipment Diesel	7	1	0	0

[8] Previously 18 AAC 50.540(c)(2)(C). This requirement was in addition to the requirement that all applications include a demonstration that the proposed source will not interfere with attainment or maintenance of the NAAQS for each air pollutant for which the source's PTE exceeded the minor source permitting threshold in 18 AAC 50.502(c)(1), (3) or (4). The latter requirement remains a part of Alaska's SIP.

[9] See 18 AAC 50.542.

[10] MARPOL Annex VI is codified at 33 U.S.C. 1901 *et seq.* Pursuant to 33 U.S.C. 1907 it is unlawful to act in violation of the MARPOL Protocol.

[11] Fuel sulfur limits are codified at 40 CFR part 1043. See 84 FR 69335, 69336 (Dec. 18, 2019).

[12] The rules that cross reference 18 AAC 50.025(c) are part of the minor source permitting program in Article 5 of 18 AAC 50, specifically: 18 AAC 50.502(c)(2)(B), 18 AAC 50.540(c)(2)(C), and 18 AAC 50.542(a)(1)(B).

[13] Clean Air Act section 110(*l*), 42 U.S.C. 7410(*l*).

[14] See 84 FR 69335, 69336 (Dec. 18, 2019). 40 CFR 1043.60(b).

[15] See the EPA 2017 NEI technical support document at *https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.*

[16] Source: The EPA NEI website, downloaded November 14, 2022. Available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei.* 2020 NEI data not released as of the EPA's data pull.

[17] This table includes sectors with reported emissions greater than zero tons per year for at least one NEI year between 2008 and 2017. For background on sectors, see page 2–1 of the EPA 2017 NEI technical support document at *https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.*

[18] NEI marine vessel emissions data for 2017 are not directly comparable to prior years because the EPA changed its protocol for estimating marine vessel emissions. See the EPA 2017 NEI technical support document at *https://www.epa.gov/sites/default/files/2021-02/documents/nei2017_tsd_full_jan2021.pdf.*

TABLE 1—SULFUR DIOXIDE EMISSIONS IN ALEUTIANS WEST CENSUS AREA—Continued

[Tons per year] [16]

Sector [17]	2008	2011	2014	2017
Mobile—On-Road Diesel Heavy Duty Vehicles	2	0	0	0
Mobile—On-Road non-Diesel Light Duty Vehicles	2	0	0	0
Total	171	170	102	1,142

In addition, from 2007 through 2014, the EPA phased in ultra-low sulfur diesel fuel standards. After 2014, the EPA mandated that all nonroad locomotive and marine diesel fuel sold in the United States must be ultra-low sulfur diesel and all nonroad, locomotive, and marine engines and equipment in the United States must use this fuel.

Lastly, Alaska's existing major and minor source permitting programs will continue to enable the Alaska DEC to manage the construction of new sources to ensure attainment and maintenance of the NAAQS. New major stationary sources are subject to Alaska's SIP-approved major new source review and prevention of significant deterioration program.[19] In 2010, the EPA established a new, more stringent 1-hour sulfur dioxide NAAQS.[20] Alaska adopted the standard into the state air plan and therefore new and modified minor industrial sources may not construct if it would interfere with attainment or maintenance of the 2010 SO_2 1-hour NAAQS, per 18 AAC 50.045 and 18 AAC 50.542.

In addition, all new minor stationary sources with SO_2 PTE greater than 40 tons per year must obtain a permit prior to beginning actual construction.[21] Similarly, portable oil and gas operations must obtain a minor source permit prior to beginning actual construction or relocation.[22] Permit applicants for minor sources in the former SO_2 special protection areas are required to include a demonstration that the proposed source will not interfere with attainment or maintenance of the NAAQS for each air pollutant for which the source's PTE exceeds the minor source permitting threshold in 18 AAC 50.502(c)(1), (3) or (4).[23] Finally, minor stationary sources are eligible for Alaska's fast track permitting procedures only if the source's predicted ambient air concentration does not exceed 80 percent of the adopted SO_2 NAAQS based on a screening analysis.[24]

In general, SIP changes of this nature must be evaluated for potential impacts on other criteria pollutants and associated NAAQS. However, this submitted change to the Alaska SIP addresses a provision that is limited to changes in potential SO_2 emissions only. As specified in the SIP-approved Alaska minor source permitting regulations at 18 AAC 50.540(c)(2), any modeling required to comply with the SO_2 special protection area provision in question would have been required to address potential changes in SO_2 emissions only. Therefore, we have not extended our non-interference analysis to other criteria pollutants and NAAQS. We propose to find that the repeal of the sulfur dioxide special protection areas will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Clean Air Act.

III. Proposed Action

The EPA is proposing to approve and incorporate by reference the ice fog and SO_2 related regulatory changes submitted by Alaska on May 16, 2022.[25] If finalized, the Alaska SIP will include the following regulations, state effective April 16, 2022:

- 18 AAC 50.025 Visibility and other special protection areas (establishing geographic areas that may need additional pollution control because of special circumstances);
- 18 AAC 50.502 Minor permits for air quality protection (establishing which types of stationary sources must obtain minor construction and/or operating permits);
- 18 AAC 50.540 Minor permit: application (outlining the required contents of an application for a minor construction and/or operating permit); and
- 18 AAC 50.542 Minor permit: review and issuance (establishing the process the state uses to review permit applications from sources, conduct public notice and comment, and issue permits).

The EPA is also proposing to approve Alaska's request to remove the following regulation from incorporation by reference:

- 18 AAC 50.080 Ice fog, state effective January 18, 1997 (regulating water vapor emissions from industrial sources that may form ice fog).

IV. Environmental Justice Considerations

To provide additional context and information to the public on potential environmental burdens and susceptible populations in underserved communities in the Unalaska and St. Paul Island areas, we conducted a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool, EJSCREEN.[26] We note, however, that this screening analysis does not serve as a basis for this proposed action. As detailed in section II. of this preamble, the EPA's proposed action is based on its determination that the SIP revisions submitted by the Alaska DEC meet Clean Air Act requirements.

EJSCREEN includes 12 EJ indices, each of which combines demographic factors with a single environmental factor.[27] EJSCREEN also includes a

[19] 18 AAC 50 Article 3. 18 AAC 50.040(h).

[20] The 2010 1-hour sulfur dioxide NAAQS is codified at 40 CFR 50.17.

[21] 18 AAC 50.502(c)(1)(C).

[22] 18 AAC 50.502(c)(2).

[23] 18 AAC 50.540(c)(2)(C).

[24] 18 AAC 50.542(b)(4).

[25] The submission also updated the state's adoption by reference of Federal air quality standards and test methods at 18 AAC 50.035 and 18 AAC 50.040. We are addressing these adoption updates in a separate action.

[26] EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen*.

[27] The 12 EJ indices in EJSCREEN are: fine particulate matter (annual average of fine particulate matter in ambient air); ozone (summer seasonal ozone averages); diesel particulate matter (diesel particulate matter level in air); air toxics cancer risk (lifetime cancer risk of inhalation of air toxics); air toxics respiratory hazard index; traffic proximity (count of vehicles per day at major roads divided by distance); lead paint (housing built before 1960, as index of potential exposure to lead paint); superfund proximity (count of proposed and listed Superfund national priority list sites divided by distance); risk management plan facility proximity (count of risk management plan facilities divided by distance); hazardous waste proximity (count of waste transfer, storage and disposal facilities and large quantity generators divided by distance); underground storage tanks (count of leaking underground storage tanks and tanks within a buffered block group); wastewater discharge (risk screening environmental indicators modeled toxic

demographic index that combines low income, race and ethnicity data for an area.[28] Additionally, there are individual socioeconomic and health indicators in EJSCREEN: unemployment; less than high school education; limited English speaking; low life expectancy; under age 5; over age 64; asthma; and medically underserved.[29]

We ran EJSCREEN reports for the Unalaska and St. Paul Island areas and placed the reports in the docket for this action. The results of these analyses, described in the following paragraphs, are being provided for informational and transparency purposes, only. There are important caveats and uncertainties that apply to these reports and this screening-level information. Please see the EJSCREEN technical documentation for more discussion on the limitations of this information.[30] We note that four of the EJ indices are not available for the geographic areas addressed in this action (Unalaska and St. Paul Island) and therefore, we reviewed the eight remaining EJ indices.[31]

The EPA has determined that the use of an initial data filter in EJSCREEN promotes consistency and provides a pragmatic first step for EPA programs and regions when interpreting screening results. For early applications of EJSCREEN, the EPA has identified the 80th percentile filter as that initial starting point. For more information on percentiles, please see the EJSCREEN technical documentation.[32] For the Unalaska area, there are two EJ indices above the 80th percentile: lead paint (90th state percentile); and risk management plan facility proximity (92nd state percentile and 84th U.S. percentile). The demographic index for Unalaska is also at the 80th state percentile. Most of Alaska, including Unalaska and St. Paul Island, is considered medically underserved.[33] For the St. Paul Island area, there are three EJ indices above the 80th percentile: lead paint (92nd state percentile); superfund proximity (94th state percentile and 86th U.S. percentile); and risk management plan facility proximity (91st state percentile and 80th U.S. percentile). The demographic index for St. Paul Island is also above the 80th percentile (86th state percentile and 79th U.S. percentile). Other indicators above the 80th percentile for St. Paul Island include: people of color (87th state percentile and 81st U.S. percentile); and limited English speaking (86th state percentile).

The Clean Air Act requires action on this Alaska SIP submission, including the submitted regulatory changes related to sulfur dioxide emissions. The EPA expects that any changes in emissions resulting from this action will be neutral or reduced. Additionally, the EPA expects that this proposed action will contribute to neutral or reduced environmental and health impacts on all populations in Unalaska and St. Paul Island, including people of color and lower income populations. At a minimum, this action is not expected to worsen existing air quality nor contribute to potential violations of the SO_2 NAAQS. More information on sulfur dioxide and its relationship to negative health impacts can be found at *https://www.epa.gov/so2-pollution*.

V. Tribal Consultation

The Qawalangin Tribe of Unalaska is located in the Unalaska area and the Pribilof Islands Aleut Community of St. Paul is located on the Island of St. Paul. Consistent with EPA policy, the EPA offered the Qawalangin Tribe of Unalaska and the Aleut Community of St. Paul Island the opportunity to consult on a government to government basis prior to this proposed action in letters dated March 14, 2023. We received no consultation or coordination requests prior to this proposed action.

VI. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III. of this preamble. The EPA is also proposing to remove from incorporation by reference 18 AAC 50.080 Ice fog (regulating water vapor emissions that may form ice fog), state effective January 18, 1997.

The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air act. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

concentrations at stream segments divided by distance).

[28] The demographic index in EJSCREEN combines the average of the number of individuals whose household income is less than twice the poverty level and the number of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.

[29] The unemployment indicator is based on the number of individuals who did not have a job at all during the reporting period made at least one specific active effort to find a job during the prior 4 weeks, and were available for work (unless temporarily ill). The less than high school education indicator is based on the number of individuals age 25 and older with less than a high school degree. The limited English speaking indicator is based on the percent of households in which all members age 14 years and over speak a non-English language and also speak English less than 'very well'. The low life expectancy indicator is based on the average life expectancy ranked as percentiles. The under age 5 indicator is based on the percent of individuals under age 5. The over age 64 indicator is based on the percent of individuals over age 64. The asthma indicator is based on the percent of individuals with asthma. The medically underserved indicator is based on areas designated as have too few primary care providers, high infant mortality, high poverty or a high elderly population.

[30] U.S. Environmental Protection Agency (EPA), 2022. EJSCREEN Technical Documentation.

[31] The four EJ indices not available for Unalaska and St. Paul Island are: fine particulate matter, ozone, traffic proximity, and wastewater discharge. The eight EJ indices available for Unalaska and St. Paul Island are: diesel particulate matter, air toxics cancer risk, air toxics respiratory hazard index, lead paint, superfund proximity, risk management plan facility proximity, hazardous waste proximity, and underground storage tanks.

[32] U.S. Environmental Protection Agency (EPA), 2022. EJSCREEN Technical Documentation.

[33] The medically underserved indicator is based on areas designated as having too few primary care providers, high infant mortality, high poverty or a high elderly population.

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described in section IV. of this preamble titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. This action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This proposed rulemaking would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided an opportunity to request consultation. Please see section V. of this preamble titled, ''Tribal Consultation.''

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 17, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–10955 Filed 5–23–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 88, No. 100
Wednesday, May 24, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Paperwork Reduction Act 60-Day Notice; Request for Comments; USAID Information Collection Activities; Submission for OMB Review, Private Sector Engagement (PSE) Hub in the Bureau for Development, Democracy, and Innovation (DDI)

AGENCY: USAID.

ACTION: Notice of information collection; request for comment.

SUMMARY: USAID Bureau for Development, Democracy, and Innovation's (DDI) Private Sector Engagement Hub will conduct a survey regarding perception of 30 external organizations assigned a Global Relationship Manager. The goal of this survey is to understand their experience when engaging with USAID. The data collected will include email addresses to allow for follow-up inquiries. USAID DDI invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please access the survey questionnaire at *https://drive.google.com/file/d/1cXheUIuYVIt2qrAcwtAe60SM5YsJR13s/view?usp=sharing.* Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Written requests for information or comments submitted via email to Matthew Weinmann at *mweinmann@usaid.gov.* Verbal requests for information or comments submitted can contact 202–712–5016.

SUPPLEMENTARY INFORMATION:

Title of Information Collection: USAID Bureau for Democracy, Development and Innovation Relationship Management Survey

Type of Request: Notice for public comment; generic clearance.

Originating Office: USAID Bureau for Development, Democracy, and Innovation (DDI).

Respondents: Key points of contact from thirty private sector organizations that have an assigned USAID Global Relationship Manager.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 30 (one from each company).

Average Time per Response: 15 minutes for survey respondents

Frequency of response: Approximately once per year.

Total estimated burden: 7.5 hours.

Total estimated cost: $750.

We are soliciting public comments to permit USAID to:

- Enhance the quality, utility, and clarity of the information to be collected. Please note that comments submitted in response to this Notice are public record.

Mandeep Singh Jangi,

Managing Director, External Influence, USAID Private Sector Engagement Hub.

[FR Doc. 2023–11059 Filed 5–23–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0037]

Notice of Request for Extension of Approval of an Information Collection; Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of sheep and goats and an indemnity program for controlling the spread of scrapie.

DATES: We will consider all comments that we receive on or before July 24, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Enter APHIS–2023–0037 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2023–0037, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov* or in our reading room, which is in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the domestic regulations to control the spread of scrapie, contact Dr. Diane Sutton, Assistant Director, Ruminant Health Center, Strategy & Policy, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737; (240) 461–4050. For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Control Number: 0579–0101.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department

of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock.

Scrapie is a progressive, degenerative, and eventually fatal disease affecting the nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease and no known treatment. The regulations in 9 CFR part 54 describe requirements related to the indemnity program, flock cleanup, testing, and a Scrapie Free Flock Certification Program (SFCP). Associated information collection activities include SFCP flock inspection reports; cooperative agreement and grant workplans, financial plans, and reports; memoranda of understanding; requests for information and reports on animals moved; records of animals acquired; scrapie epidemiology reports; appraisal and indemnity claims; written agreements and certifications; inventories and claims of animal value; receipts of disposal expenses (payment of indemnity); reports for U.S. Environmental Protection Agency exempted disinfectants used; flock plans; post exposure management and monitoring plans; reports of suspect or dead animals; scrapie Post Exposure Monitoring and Management Plan inspection reports; program approvals of tests for scrapie; cooperative State-Federal scrapie control program scrapie test records; specimen submissions; requests for laboratory approval; and applications for the scrapie flock certification program.

Regulations in 9 CFR part 79 describe requirements related to restrictions on the interstate movement of certain sheep and goats to control the spread of scrapie. Associated information collection activities include interstate certificates of veterinary inspection; requests by a breed registry to have its tattoos approved as official identification; requests for approval of sheep or goat identification device types or methods not currently approved; applications for and assignment of identification numbers or official tags including blue tags; an optional application for and assignment of identification numbers; reports when identification is applied; requests to move animals in interstate commerce; requests to replace official identification for lost or damaged official identification devices; requests for approval to produce or renew approval to produce official identification devices; agreements to send official ear tags to specified individuals; monthly reports of official identification produced; data entry of official identification devices produced and assigned; compliance agreements and reports for consignments when identification is applied; declinations to participate or provide information; herd owner notification of designation of flocks or animals; permits for movement of restricted animals; State application for scrapie classification, classification renewal, or reclassification of a State; epidemiology and identification compliance reports; and concurrence with APHIS/State animal designation.

Information collection activities associated with both parts 54 and 79 include training and approval of designated scrapie epidemiologists, waivers of requirements for scrapie control pilot projects, appeals of APHIS decisions, approval of terminal feedlots, and owner/hauler statements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection echnologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.77 hours per response.

Respondents: Flock owners; market owners, operators, or managers; dealers; slaughter plant owners, operators, or managers; feedlot owners, operators, or managers; tag manufacturers; managers of producer organizations; accredited veterinarians; and State animal health authorities.

Estimated annual number of respondents: 174,851.

Estimated annual number of responses per respondent: 6.

Estimated annual number of responses: 1,082,777.

Estimated total annual burden on respondents: 828,878 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 18th day of May 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–11063 Filed 5–23–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

[Docket ID FSA–2023–0004]

Notice of Funds Availability (NOFA) for the Organic Dairy Marketing Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: The Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), is announcing the availability of marketing assistance funding to organic dairy operations in the United States. Eligible Organic Dairy Marketing Assistance Program (ODMAP) participants will receive a one-time payment to assist with projected marketing costs for 2023, calculated based on a cost share of marketing costs on the pounds of organic milk marketed for the 2022 calendar year (or a projection of 2023 pounds of organic milk marketed if warranted in certain situations supported by documentation), not to exceed 5 million pounds per operation to target smaller organic dairy operations. ODMAP payments will assist organic dairy producers in expanding the market for organic dairy and increasing the consumption of organic dairy, through the continued marketing of organic dairy, as these operations face a variety of marketing challenges and input cost increases and supply chain-related shortages.

DATES: *Applications Due Date:* We will accept applications through July 26, 2023.

FOR FURTHER INFORMATION CONTACT: Douglas Kilgore, (202) 748–2434, *douglas.e.kilgore@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, organic dairy farms have faced—and continue to face—a variety of challenges, and many are struggling to remain in business. Notably, organic dairy operations have limited ability to pass along cost increases to retailers or consumers without a decrease in domestic consumption of organic dairy and the cost increases have, in many cases, eliminated profit margins, especially among smaller operations that do not have the ability to take advantage of economies of scale. Marketing and operational challenges may result in decisions to cease operations entirely without intervention, which will reduce the organic dairy market. Organic grain and forage commodities have traditionally been relatively small markets where the domestic U.S. demand for organic feed has outstripped supply, resulting in the need for imports. Input costs and availability, especially feed, have seen several years of sustained increases and volatility due to a variety of factors including drought in major forage production regions in the United States, and transportation and trade challenges both in general post-pandemic and specific to the disruptions caused by the invasion of Ukraine, which has traditionally been one of the major organic global feed suppliers.

In addition to these input costs and challenges, organic dairy farmers also have seen higher delivery and marketing costs, especially those related to transportation and hauling. As part of the system through which all dairy farmers provide milk and dairy products to consumers, dairies bear the costs of milk hauling and other marketing costs. These marketing costs for organic dairies, however, can be significantly greater than the conventional market. In addition, participants in the organic dairy sector must take additional steps to keep the organic milk separated and its status as organic clearly preserved. In some cases, these requirements necessitate longer and more costly hauling routes, including the costs of finding truck drivers willing to cover longer routes with multiple stops. The recent shortage of truck drivers in general and specifically those with the experience and training to operate tanker trucks exacerbates these challenges further.

Organic dairy operations also tend to be smaller farms than conventional dairy operations, which means they often have less production to spread the various fixed costs over or have higher per unit costs. Therefore, they may not benefit from the same economies of scale as conventional dairies. In particular, milk pick-up and hauling costs may be a challenge due to the need to have dedicated organic pick-up routes that need to stop at multiple farms or use smaller tankers.

ODMAP will provide assistance to organic dairy operations that produce milk from cows as well as organic dairy operations that produce milk from goat and sheep. All three types of organic dairy operations are eligible, since all three types of operations face the same challenges related to organic marketing and generally follow similar business and marketing models such as pooling milk through cooperatives or selling directly to milk processors that make dairy products such as cheese. While there are fewer, and therefore less data available on, organic dairy operations that produce milk from goats and sheep compared to cows, the impact of increased marketing costs to the consumption of organic dairy remains constant across all three.

Data to estimate the marketing costs for all species relies on conventional cow milk estimates, since more specific national organic cow, sheep, or goat estimates are not available. Given the unique marketing challenges and strategies for organic dairy operations discussed above, these conventional estimates are likely to be conservative and do not reflect the full marketing costs for organic production.

Through ODMAP, USDA is assisting organic dairy operations by providing payments to assist with their projected marketing costs in 2023. The CCC Charter Act (15 U.S.C. 714c(e)) includes authority for CCC to use its general powers and funding to increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities. USDA is providing this marketing assistance to organic dairy producers to help keep these small organic dairies in operation by aiding in the expansion of the domestic market for organic dairy, which will increase domestic consumption of organic dairy, in order to counteract the currently projected reduction in this market. Without the assistance, it is projected that organic dairies, and particularly small organic dairies, may cease or decrease organic dairy production and reduce the domestic supply and consumption of organic milk.

FSA designed ODMAP to leverage a simplified, streamlined application process to expedite assistance to certified organic dairy operations that produce organic milk from dairy cows, dairy goats, or dairy sheep. ODMAP provides one-time assistance for a cost share of projected marketing costs for eligible organic dairies for 2023, not to exceed 5 million pounds per operation to target smaller organic dairy operations, in order to provide support to aid or expand the market for organic dairy operations during 2023. All organic dairy operations that apply for ODMAP will be required to provide their USDA certification of organic status, confirming their operation as an organic dairy operation at the time of application. In order to calculate projected marketing costs for 2023, the streamlined process will have operations certify to their organic milk production for the 2022 calendar year, that was marketed directly as organic milk or indirectly through organic dairy products or a projection of pounds of organic milk marketed in 2023 if warranted due to changes in circumstances between 2022 and 2023 supported by documentation as discussed further below. While production documentation for 2022 production is not required at the time of application, operations should retain supporting documentation and calculations for 3 years should they be selected for a spot check.

FSA will administer ODMAP on behalf of CCC, using CCC funds. The payment may be issued in 2 parts.

There is $104 million from CCC funds available for ODMAP assistance. ODMAP payments will be subject to availability of funding. FSA will make an initial payment to eligible applicants factored by 75 percent. If sufficient available funding remains at the conclusion of the application period, an additional payment of up to the remaining 25 percent may be made to each eligible applicant if USDA determines that additional assistance is still needed.

The funds announced in this NOFA are not subject to sequestration.

Average Milk Marketing Cost

The only available estimates to calculate an average milk marketing cost are from milk marketed through the Federal Milk Marketing Orders (FMMO), which is primarily conventional cow milk. There are no national-level data sets on milk marketing and hauling costs specific to organic sheep or goat operations. While an estimated average milk marketing cost from FMMO is likely conservative given the likely higher per unit costs for smaller operations that are more common for organic production, and the unique marketing challenges facing organic dairy operations, the similarities in marketing options and costs between conventional and organic make it the best proxy available.

To develop the ODMAP payment rate, FSA worked with the Agricultural Marketing Service (AMS) to determine an average marketing cost per hundredweight, using the AMS data from the FMMO regional model documentation (*https://www.ams.usda.gov/sites/default/files/media/FinalDecisionEconometricModelDocumentation.pdf*), which estimates the relationship between each FMMO uniform milk price and the National Agriculture Statistics Service (NASS) all-milk price.

Through this comparison of the milk prices, the model estimates the milk marketing and hauling fees that are deducted in the net producer milk marketing statements (producer paychecks).

Averaging these estimates of milk marketing costs among orders results in an average of $1.10 per hundredweight for 2022, which will be used as the ODMAP average milk marketing cost to calculate assistance.

Eligibility

To be an eligible ODMAP applicant, the organic dairy operation must produce and market organic milk from cows, goats, or sheep at the time of application, provide their USDA Certification of organic status for 2023, and have documentation to support any certified projection of 2023 pounds of organic milk marketed.

To be eligible for ODMAP assistance each applicant must:

(1) Submit a FSA–630 application and any additional required documentation as specified in the Application Process section below; and

(2) Comply with all provisions of this NOFA and comply with the following regulations:

- 7 CFR part 12—Highly Erodible Land and Wetland Conservation;
- 7 CFR 718.6, Controlled Substance; and
- 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been declared Incompetent, if applicable.

In addition, consistent with other FSA assistance programs, a producer must be a:

- Citizen of the United States;
- Resident alien, which for purposes of ODMAP means ''lawful alien'' as defined in 7 CFR 1400.3;
- Partnership consisting solely of citizens of the United States or resident aliens; or
- Corporation, limited liability company, or other organizational structure organized under State law consisting solely of citizens of the United States or resident aliens.

Federal, State, and local governments are not eligible for ODMAP payments.

Payment Rates and Calculations

The ODMAP initial payment will be calculated by using the producer-certified pounds of organic milk projected to be marketed in 2023, multiplied by the $1.10 per cwt ODMAP payment rate, multiplied by a factor of 75 percent. The pounds of organic milk projected to be marketed in 2023 will be (i) the self-certified organic milk production marketed directly by the operation in 2022 or used as inputs in related-organic dairy products marketed in 2022, that can be supported by documentation maintained in the ordinary course of business, or (ii) if approved by the Deputy Administrator for Farm Programs (Deputy Administrator), an operation-specific certified estimate of organic milk projected to be marketed in 2023 that is supported by documentation maintained in the ordinary course of business from the applicant.

Operations that (a) transitioned to organic in 2022 or 2023, (b) are new organic operations in 2022 or 2023, or (c) have increased organic milk production capacity by 15 percent or greater in 2023 as compared to 2022, may request to use a certified estimate of their operation's reasonably projected organic milk to be marketed in 2023 based on average daily organic production of current herd that can be supported by documentation maintained in the ordinary course of business, including, but not limited to, milk marketing statements, milk production records, contemporaneous records, or similar supporting documentation, as may be requested by the Deputy Administrator. These operations must provide an explanation of the basis for their 2023 projection on the FSA–630 and how those projections are supported by the supporting documentation they submit with the application. All organic dairy operations making such a request must submit with their application all available 2023 milk marketing statements, in addition to all other documentation necessary to support their certification. Organic dairy operations should contact their local FSA Service Center if they have questions regarding their particular circumstances and the documentation necessary to support such a request. The request will be evaluated by the Deputy Administrator at the Deputy Administrator's discretion to assess whether the estimate is adequately supported by documentation and reasonable based on the documented average daily production of the current organic herd.

The initial payments will be made to eligible applicants on a rolling basis as applications are submitted and approved. If funds remain at the conclusion of the application period, a second payment to eligible applicants of up to the remaining 25 percent may be issued subject to available funding and a determination by FSA of the need for additional marketing assistance based on discussions with USDA experts and economists, industry, and stakeholders regarding impact of initial marketing assistance on domestic consumption of organic dairy.

Organic dairy operations are only eligible for payment on up to 5 million pounds of organic milk.

Application Process

FSA will make available to organic dairy operations form FSA–630 to apply for assistance for pounds of organic milk projected to be marketed in 2023. FSA will accept applications from May 24, 2023, through July 26, 2023. To apply for ODMAP assistance, all applicants must submit a completed form FSA–630 and all other required documentation to their administrative FSA county office by July 26, 2023.

Applicants must submit the following forms, if not already on file, in person or by mail, email, facsimile:

- Form FSA–630, ODMAP Application;
- Manual Form CCC–902–I, Farm Operating Plan for an Individual, as applicable;
- Manual Form CCC–902E, Farm Operating Plan for an Entity, as applicable;
- CCC–901, Member Information for Legal Entities (if applicable);
- AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification; and

• AD–2047, Customer Data Worksheet.

The Deputy Administrator has the discretion and authority to waive or modify filing deadlines and other requirements or program provisions not specified in law, in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of ODMAP. Although producers have a right to a decision on whether they filed applications by the deadline or not, producers have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to exercise discretion on requests to waive or modify ODMAP provisions will not be considered an adverse decision and is, by itself, not appealable.

Evaluation and Approval of Payments

FSA will review each ODMAP application and supporting documentation to determine eligibility. FSA, on behalf of CCC, will approve applications for an ODMAP payment for eligible applicants consistent with the terms specified in this document.

If requested by FSA, the applicant must provide additional supporting documentation to verify the accuracy of information provided on the application. If any supporting documentation is requested, the documentation must be submitted to FSA within 30 calendar days from the request or the application will be disapproved by FSA, and, if payment has been made, full ODMAP payment will be required to be refunded to FSA with interest from the date of disbursement. ODMAP is subject to the availability of funding and will be funded in the order in which applications are approved. If additional funding is allocated to ODMAP after initial funding is depleted, additional applications will be reviewed, approved and funded, if the eligibility criteria is met, in the order received during the application period, subject to the availability of those additional funds.

An initial ODMAP payment will be issued after an application is approved. At the conclusion of signup, a second payment may be issued to eligible applicants.

Provisions Requiring Refund to FSA

In the event any ODMAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated, and the participant must refund any excess payment to FSA with interest to be calculated from the date of the disbursement to the participant. If, for whatever reason, FSA determines that the applicant misrepresented either the reported organic milk production or organic certification or is otherwise ineligible for payment, the application will be disapproved and the full ODMAP payment will be required to be refunded to FSA with interest from the date of disbursement. ODMAP applications, FSA–630, will be reviewed and spot-checked by FSA for program eligibility and payment calculation purposes through milk marketing statements or similar supporting documentation. ODMAP participants must retain all ODMAP supporting documentation for 3 years.

The liability of anyone for any penalty or sanction resulting from a ODMAP application, or for any refund to FSA, is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

Miscellaneous Provisions

Appeal regulations specified in 7 CFR parts 11 and 780 apply. FSA program requirements and determinations that are not in response to, or result from, an individual disputable set of facts in an individual participant's application for assistance are not matters that can be appealed.

Paperwork Reduction Act Requirements

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503–0028. FSA will collect the information from the organic dairy operations to qualify for the ODMAP payment. ODMAP provides one-time funding as described in this NOFA.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799).

The purpose of ODMAP is to provide marketing assistance funding to organic dairy operations in the United States to increase the domestic consumption of organic milk and organic milk products by aiding in the expansion of the organic milk market. The limited discretionary aspects of ODMAP do not have the potential to impact the human environment as they are administrative. Accordingly, these discretionary aspects are covered by the categorical exclusions in 7 CFR 799.31(b)(6)(iii) that applies to price support programs, provided no extraordinary circumstances are found to exist. As such, the implementation of ODMAP and the participation in ODMAP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this action and this document serves as documentation of the programmatic environmental compliance decision for this federal action.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Assistance Listing, to which this document applies is 10.977, Organic Dairy Marketing Assistance Program (ODMAP).

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 Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). 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.

Zach Ducheneaux,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2023–11030 Filed 5–19–23; 4:15 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–12–2023]

Foreign-Trade Zone (FTZ) 81; Authorization of Production Activity; CAN–ONE (USA), Inc.; (Aluminum Beverage Cans); Nashua, New Hampshire

On January 19, 2023, CAN–ONE (USA), Inc. submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 81F, in Nashua, New Hampshire.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 8796, February 10, 2023). On May 19, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: May 19, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023–11060 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–916, C–508–815, C–580–917]

Brass Rod From India, Israel, and the Republic of Korea: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 17, 2023.

FOR FURTHER INFORMATION CONTACT: Dusten Hom (India), Zachary Shaykin (Israel), and Jacob Saude (the Republic of Korea (Korea)), AD/CVD Operations, Offices I, IV, and VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075, (202) 482–2638, or (202) 482–0981, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 27, 2023, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of brass rod from India, Israel, and Korea filed in proper form on behalf of the American Brass Rod Fair Trade Coalition and its constituent members, Mueller Brass Co. and Wieland Chase LLC, U.S., producers of brass rod (collectively, the petitioners).[1] The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of brass rod from Brazil, India, Israel, Mexico, South Africa, and Korea.[2]

On May 2 and 10, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] On May 8 and 11, 2023, the petitioners filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that the Government of India (GOI), the Government of Israel (GISR), and the Government of Korea (GOK) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of brass rod in India, Israel, and Korea, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing brass rod in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry because the petitioners are interested parties as defined in sections 771(9)(C) and (F) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigations.[5]

Periods of Investigation

Because the Petitions were filed on April 27, 2023, the periods of investigation (POI) for India, Israel, and Korea are January 1, 2022, through December 31, 2022.[6]

Scope of the Investigations

The merchandise covered by these investigations is brass rod from India, Israel, and Korea. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On May 2 and 10, 2023, Commerce requested information from the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic

[1] *See* Petitioners' Letter, ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Antidumping and Countervailing Duty Petitions,'' dated April 27, 2023 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petition for the Imposition of Countervailing Duties on Imports of Brass Rod from Israel: Supplemental Questions,'' dated May 2, 2023; ''Petitions for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa and Countervailing Duties on Imports from India, Israel, and the Republic of Korea: Supplemental Questions,'' dated May 2, 2023 (General Issues Supplemental Questionnaire); ''Petition for the Imposition of Countervailing Duties on Imports of Countervailing Duties on Imports of Brass Rod from India: Supplemental Questions, dated May 2, 2023; and ''Petitions for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa and Countervailing Duties on Imports from India, Israel, and the Republic of Korea: Supplemental Questions,'' dated May 10, 2023.

[4] *See* Petitioners' Letters, ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated May 8, 2023 (General Issues Supplement); and ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Second Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated May 11, 2023 (Scope Supplement).

[5] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[6] *See* 19 CFR 351.204(b)(2).

industry is seeking relief.[7] On May 8 and 11, 2023, the petitioners revised the scope language.[8] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[10] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 6, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 16, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All scope comments must also be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[12] Commerce held consultations with the GOI on May 11, 2023, the GISR on May 8, 2023, and the GOK on May 10, 2023.[13]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[16] Based on our analysis of the information submitted on the record, we have determined that brass rod, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their own production of brass

[7] *See* General Issues Supplemental Questionnaire at 3–4; *see also* Second General Issues Supplemental Questionnaire at 1.

[8] *See* General Issues Supplement; *see also* Scope Supplement.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* Commerce's Letters, ''Countervailing Duty Petition on Brass Rods from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated May 2, 2023; Countervailing Duty Petition on Brass Rod from Israel: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 28, 2023; and ''Countervailing Duty Petition on Brass Rod from the Republic of Korea,'' dated April 28, 2023.

[13] *See* Memoranda, ''Petition for the Imposition of Countervailing Duties on Imports of Brass Rod from the Republic of India: Teleconference Consultations with the Indian Government,'' dated May 11, 2023; ''Petition for the Imposition of Countervailing Duties on Imports of Brass Rod from Israel: Teleconference Consultations with the Israeli Government,'' dated May 10, 2023; and ''Brass Rod from the Republic of Korea: Consultations with Government of the Republic of Korea,'' dated May 10, 2023.

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[16] *See* Petition at Volume I (pages 19–20); *see also* General Issues Supplement at 5–7.

[17] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* CVD Investigation Initiation Checklists, ''Brass Rod from India, Israel, and the Republic of Korea,'' dated concurrently with this notice (Country-Specific CVD Initiation Checklists), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa).

rod in 2022 and compared this to the total 2022 production of brass rod by the U.S. industry.[18] We relied on data provided by the petitioners for purposes of measuring industry support.[19]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[20] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[21] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[22] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[23] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[24]

Injury Test

Because India, Israel, and Korea are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from India, Israel, and/or Korea materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[25]

The petitioners contend that the industry's injured condition is illustrated by the significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; adverse impact on the domestic industry's operations, production, commercial shipments, capacity utilization, and employment variables; and adverse impact on the domestic industry's financial performance.[26] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[27] In accordance with section 771(7)(G)(ii)(IV) of the Act, which states that the ITC cannot cumulate imports ''from any country that is party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the {ITC} determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country,'' we considered the petitioners' allegation of injury with respect to Israel, a party to an agreement with the United States establishing a free trade area in place and effect before January 1, 1987, independently of the allegations for Brazil, India, Korea, Mexico, and South Africa and found that the information provided satisfies the requirements for initiation.[28]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of brass rod from India, Israel, and Korea benefit from countervailable subsidies conferred by the GOI, GISR, and GOK, respectively. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

India

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 13 of the 14 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate an investigation of each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for these investigations is available on ACCESS.

Israel

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on seven of the eight programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate an investigation of each program, *see* the Israel CVD Initiation Checklist. A public version of the initiation checklist for these investigations is available on ACCESS.

Korea

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on 36 of the 37 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate an investigation an investigation of each program, *see* the Korea Initiation Checklist. A public version of the initiation checklist for these investigations is available on ACCESS.

[18] *See* Petitions at Volume I (pages 4–5 and Exhibit GEN–1); *see also* General Issues Supplement at 5 and Exhibit SUPP1–GEN–3.

[19] *See* Petitions at Volume I (pages 3–5 and Exhibit GEN–1); *see also* General Issues Supplement at 5 and Exhibit SUPP1–GEN–3. For further discussion, *see* Country-Specific CVD Initiation Checklists at Attachment II.

[20] *See* Petitions at Volume I (pages 3–5 and Exhibit GEN–1); *see also* General Issues Supplement at 5 and Exhibit SUPP1–GEN–3. For further discussion, *see* the Country-Specific CVD Initiation Checklists at Attachment II.

[21] *See* Country-Specific CVD Initiation Checklists at Attachment II; *see also* section 702(c)(4)(D) of the Act.

[22] *See* Country-Specific CVD Initiation Checklists at Attachment II.

[23] *Id.*

[24] *Id.*

[25] *See* Petitions at Volume I (pages 21–22 and Exhibit GEN–5); *see also* General Issues Supplement at 7 and Exhibit SUPP1–GEN–4).

[26] *See* Petitions at Volume I (pages 1–2, 21–41, and Exhibits GEN–5 through GEN–25); *see also* General Issues Supplement at 7–8 and Exhibits SUPP1–GEN–4 and SUPP1–GEN–5.

[27] *See* Country-Specific CVD Initiation Checklists at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa).

[28] *See* Country-Specific CVD Initiation Checklists at Attachment III; *see also* section 771(7)(G)(ii)(IV) of the Act; and Statement of Administrative Action Accompanying the Uruguay Rounds Agreement Act, H.R. Doc. 103–216, Vol. 1 (1994), at 850 (''Imports from Israel may not be cumulated with imports from other countries unless the {ITC} first determines that the domestic industry is materially injured by reason of such imports from Israel.'').

Respondent Selection

The petitioners named one company in India, one company in Israel, and two companies in Korea as producers and/or exporters of brass rod.[29] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of brass rod from India and Korea during the POI under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigation'' in the appendix.

Between May 15 and 16, 2023, Commerce released CBP data on U.S. imports of brass rod from India, Israel, and Korea under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three business days after the publication date of the notice of initiation of these investigations.[30] Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOI, GISR, and GOK via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the CVD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of brass rod from India, Israel, and/or Korea are materially injuring, or threatening material injury to, a U.S. industry.[31] A negative ITC determination for any country will result in an investigation being terminated with respect to that country.[32] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [33] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[34] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances, Commerce will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[35]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[36] Parties must use the certification formats provided in 19 CFR 351.303(g).[37] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The products covered by these investigations are brass rod and bar (brass

[29] *See* Petitions at Volume I (pages 15 through 17 and Exhibit I–3).

[30] *See* Memoranda, ''Countervailing Duty Petition on Brass Rod from the Republic of Korea: Release of Data from U.S. Customs and Border Protection,'' dated May 15, 2023; ''Countervailing Duty Petition on Brass Rods from India: Release of Data from U.S. Customs and Border Protection,'' dated May 15, 2023; and ''Countervailing Duty Petition on Brass Rod from Israel: Release of Data from U.S. Customs and Border Protection,'' dated May 16, 2023.

[31] *See* section 703(a)(1) of the Act.

[32] *Id.*

[33] *See* 19 CFR 351.301(b).

[34] *See* 19 CFR 351.301(b)(2).

[35] *See* 19 CFR 351.302; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[36] *See* section 782(b) of the Act.

[37] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

rod), which is defined as leaded, low-lead, and no-lead solid brass made from alloys such as, but not limited to the following alloys classified under the Unified Numbering System (UNS) as C27450, C27451, C27460, C34500, C35000, C35300, C35330, C36000, C36300, C37000, C37700, C48500, C67300, C67600, and C69300, and their international equivalents.

The brass rod subject to these investigations has an actual cross-section or outside diameter greater than 0.25 inches but less than or equal to 12 inches. Brass rod cross-sections may be round, hexagonal, square, or octagonal shapes as well as special profiles (*e.g.,* angles, shapes).

Standard leaded brass rod covered by the scope contains, by weight, 57.0–65.0 percent copper; 0.5–3.0 percent lead; no more than 1.3 percent iron; and at least 15 percent zinc. No-lead or low-lead brass rod covered by the scope contains by weight 59.0–76.0 percent copper; 0–1.5 percent lead; no more than 0.35 percent iron; and at least 15 percent zinc. Brass rod may also include other chemical elements (*e.g.,* nickel, phosphorous, silicon, tin, *etc.*).

Brass rod may be in straight lengths or coils. Brass rod covered by these investigations may be finished or unfinished, and may or may not be heated, extruded, pickled, or cold-drawn. Brass rod may be produced in accordance with ASTM B16, ASTM B124, ASTM B981, ASTM B371, ASTM B453, ASTM B21, ASTM B138, and ASTM B927, but such conformity to an ASTM standard is not required for the merchandise to be included within the scope.

Excluded from the scope of these investigations is brass ingot, which is a casting of unwrought metal unsuitable for conversion into brass rod without remelting, that contains, by weight, at least 57.0 percent copper and 15.0 percent zinc.

The merchandise covered by these investigations is currently classifiable under subheadings 7407.21.9000, 7407.21.7000, and 7407.21.1500 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheadings 7403.21.0000, 7407.21.3000, and 7407.21.5000. The HTSUS subheadings and UNS alloy designations are provided for convenience and customs purposes. The written description of the scope of the investigations is dispositive.

[FR Doc. 2023–11005 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: As a result of determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) in their five-year (sunset) review that revocation of the antidumping duty (AD) order on fresh garlic from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of the AD order on fresh garlic from China.

DATES: Applicable May 24, 2023.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1994, Commerce published the AD order on imports of fresh garlic from China.[1] On October 3, 2022, the ITC instituted,[2] and Commerce initiated [3] the fifth five-year (sunset) review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and, therefore, Commerce notified the ITC of the magnitude of the margin likely to prevail were the *Order* to be revoked.[4]

On May 17, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this *Order* does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings: 0703.20.0005, 0703.20.0010, 0703.20.0015, 0703.20.0020, 0703.20.0000, 0703.20.0090, 0710.80.7060, 0710.80.97500, 0711.90.6000, 0711.90.6500, 2005.90.9500, 2005.90.9700, and 2005.99.9700 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive. To be excluded from the *Order,* garlic entered under the HTSUS subheadings listed above that is: (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection to that effect.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

[1] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 5209 (November 16, 1994) (*Order*).

[2] *See Fresh Garlic from China; Institution of a Five-Year Review,* 87 FR 59824 (October 3, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 59779 (October 3, 2022).

[4] *See Fresh Garlic from the People's Republic of China: Final Results of the Expedited Fifth Review of the Antidumping Duty Order,* 88 FR 7940 (February 7, 2023).

[5] *See Fresh Garlic from the People's Republic of China, Investigation No. 731–TA–683 (Fifth Review),* 88 FR 31525 (May 17, 2023).

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and notice are in accordance with sections 751(c) and (d)(2) and 777(i)(1) the Act, and published in accordance with section 777(i) of the Act and 19 CFR 351.218(f)(4).

Dated: May 18, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–11061 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–912]

Certain Non-Refillable Steel Cylinders From India: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 17, 2023.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros or Macey Mayes, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425 or (202) 482–4473, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 27, 2023, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of certain non-refillable steel cylinders (cylinders) from India filed in proper form on behalf of Worthington Industries (the petitioner), a U.S. producer of cylinders.[1] The Petition was accompanied by a countervailing duty (CVD) petition concerning imports of cylinders from India.[2]

On May 1 and 9, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] On May 5 and 10, 2023, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of cylinders from India are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such cylinders are materially injuring, or threatening material injury to, the cylinder industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the Petition was filed on behalf of the domestic industry because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested AD investigation.[5]

Period of Investigation

Because the Petition was filed on April 27, 2023, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) for the AD investigation is April 1, 2022, through March 31, 2023.

Scope of the Investigation

The products covered by the investigation are cylinders from India. For a full description of the scope of the investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[7] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 6, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 16, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[8] An electronically filed document must be received successfully in its entirety by the time and date it is due.[9]

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on

[1] *See* Petitioner's Letter, ''Certain Non-Refillable Cylinders from India—Petition from the Imposition of Antidumping and Countervailing Duties,'' dated April 27, 2023 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Non-Refillable Steel Cylinders from India: Supplemental Questions,'' dated May 1, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Certain Non-Refillable Steel Cylinders from India: Supplemental Questions,'' dated May 1, 2023; and ''Petition for the Imposition of Antidumping Duties on Imports of Certain Non-Refillable Steel Cylinders from India: Supplemental Questions,'' dated May 9, 2023.

[4] *See* Petitioner's Letters, ''Petitioner's Amendment to Volume I Relating to General and Injury Information,'' dated May 3, 2023 (General Issues Supplement); and ''Petitioner's Amendment to Volume II Relating to Antidumping Duties,'' dated May 5, 2023; and ''Petitioner's 2nd Amendment to Volume II of the Petition Relating to Antidumping Duties,'' dated May 10, 2023.

[5] *See* section on ''Determination of Industry Support for the Petitions'' section, *infra.*

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[9] *See* 19 CFR 351.303(b)(1).

the appropriate physical characteristics of cylinders to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant cost of production (COP) accurately, as well as to develop appropriate product-comparison criteria where appropriate.

Subsequent to the publication of this notice, Commerce intends to release a proposed list of physical characteristics and product-comparison criteria, and interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe cylinders, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, Commerce intends to establish a deadline for relevant comments and submissions at the time it releases the proposed list of physical characteristics and product-comparison criteria. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[12] Based on our analysis of the information submitted on the record, we have determined that cylinders, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[13]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2022.[14] The petitioner stated that there are no other known producers of cylinders in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[15] We relied on data provided by the petitioner for purposes of measuring industry support.[16]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[17] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[18] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] *See* Petition at Volume I (pages 13–17)*; see also* General Issues Supplement at 2 and Exhibits GEN–SUPP–1 and GEN–SUPP–2.

[13] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist,'' Certain Non-Refillable Steel Cylinders from India,'' dated concurrently with this notice (AD Initiation Checklist), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from India).

[14] *See* Petition at Volume I (pages 3 and Exhibit GEN–2).

[15] *Id.* at 2–3 and Exhibit GEN–1*; see also* General Issues Supplement at 2 and Exhibit GEN–1.

[16] *See* Petition at Volume I (pages 2–3 and Exhibits GEN–1 and GEN–2)*; see also* General Issues Supplement at 2 and Exhibit GEN–SUPP–1. For further discussion, *see* the AD Initiation Checklist at Attachment II.

[17] *See* AD Initiation Checklist at Attachment II; *see also* section 732(c)(4)(D) of the Act.

[18] *See* AD Initiation Checklist at Attachment II.

production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[19] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[20]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[21]

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; declining market share; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry's capacity utilization, commercial shipments, employment variables, and financial performance.[22] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[23]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of cylinders from India. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

U.S. Price

The petitioner based export price (EP) on pricing information for sales of, or sales offers for, cylinders produced in and exported from India. The petitioner made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where appropriate.[24]

Normal Value [25]

The petitioner based NV on home market pricing information obtained through market research for cylinders produced in and sold, or offered for sale, in India during the period of investigation.[26] The petitioner provided information indicating that the prices for cylinders sold or offered for sale in India were below the COP; therefore, the petitioner also calculated NV based on CV.[27] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value,'' below.

Normal Value Based on Constructed Value

As noted above, the petitioner provided information indicating that the prices for cylinders sold or offered for sale in India were below COP. Therefore, the petitioner also based NV on CV. Pursuant to section 773(e) of the Act, the petitioner calculated CV as the sum of the cost of manufacturing, selling, general, and administrative (SG&A) expenses, financial expenses, and profit.[28]

In calculating the cost of manufacturing, the petitioner relied on the production experience and input consumption rates of a U.S. producer of cylinders, valued using publicly available information applicable to India.[29] In calculating SG&A expenses, financial expenses, and profit ratios, the petitioner relied on the financial statements of producers of identical merchandise in India.[30]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of cylinders from India are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV and CV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for cylinders from India are 6.24 percent and 61.00 percent *ad valorem.*[31]

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of cylinders from India are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner identified five companies in India as producers/exporters of cylinders.[32] In the event Commerce determines that the number of companies in India is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to potential respondents. Following standard practice in AD investigations involving market economy countries, Commerce would normally select respondents based on U.S. Customs and Border Protection (CBP) entry data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. However, for this investigation, the main HTSUS subheadings under which the subject merchandise would enter (7311.00.0060 and 7311.00.0090) are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We, instead, intend to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Exporters/producers of cylinders from India that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website, at *https://enforcement.trade.gov/questionnaires/questionnaires-ad.html.* Responses to the Q&V questionnaire must be submitted by the relevant exporters/producers no later than 5:00 p.m. ET on May 31, 2023, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. An

[19] *Id.*

[20] *Id.*

[21] *See* Petition at Volume I (pages 12, 17–19, and Exhibits GEN–1 and GEN–11).

[22] *Id.* at 19–31 and Exhibits GEN–1 and GEN–8 through GEN–15; *see also* General Issues Supplement at 3 and Exhibits GEN–SUPP–3 and GEN–SUPP–4.

[23] *See* AD Initiation Checklist at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from India).

[24] *See* AD Initiation Checklist.

[25] In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[26] *See* AD Initiation Checklist.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *See* AD Initiation Checklist for details of the calculations.

[32] *See* Petition at Volume I (Exhibit GEN–8).

electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of India via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of cylinders from India are materially injuring, or threatening material injury to, a U.S. industry.[33] A negative ITC determination will result in the investigation being terminated.[34] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [35] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[36] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial response to section D of the AD questionnaire.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances, Commerce will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.[37]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[38] Parties must use the certification formats provided in 19 CFR 351.303(g).[39] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance).[40] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[41]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

[33] *See* section 733(a) of the Act.

[34] *Id.*

[35] *See* 19 CFR 351.301(b).

[36] *See* 19 CFR 351.301(b)(2).

[37] *See* 19 CFR 351.302; and *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[38] *See* section 782(b) of the Act.

[39] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[40] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008).

[41] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: May 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation specification 39, TransportCanada specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 100-cubic inch (1.6 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and are unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0030 and 7310.29.0065. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2023–11003 Filed 5–23–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–859, A–533–915, A–508–814, A–201–858, A–580–916, A–791–828]

Brass Rod From Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 17, 2023.

FOR FURTHER INFORMATION CONTACT: Claudia Cott (Brazil), Christopher Williams (India), Andrew Hart (Israel), Frank Schmitt (Mexico), Krisha Hill or Drew Jackson (the Republic of Korea (Korea)), and Dmitry Vladimirov (South Africa), AD/CVD Operations, Offices I, II, IV, and VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270, (202) 482–5166, (202) 482–1058, (202) 482–4880, (202) 482–4307 or (202) 482–4406, and (202) 482–0665, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 27, 2023, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa, filed in proper form on behalf of the American Brass Rod Fair Trade Coalition and its constituent members, Mueller Brass Co. and Wieland Chase LLC, U.S., producers of brass rod (collectively, the petitioners).[1] These AD petitions were accompanied by countervailing duty (CVD) petitions concerning imports of brass rod from India, Israel, and Korea.[2]

In May 2023, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[3] Additionally, in May 2023, the petitioners filed timely responses to these requests for additional information.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the brass rod industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (F) of the Act.[5] Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

Periods of Investigation

Because the Petitions were filed on April 27, 2023, pursuant to 19 CFR 351.204(b)(1), the periods of investigation (POI) for the Brazil, India,

[1] *See* Petitioners' Letter, ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Antidumping and Countervailing Duty Petitions,'' dated April 27, 2023 (Petitions).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil, India, Israel, Mexico, the Republic of Korea, and South Africa and Countervailing Duties on Imports from India, Israel, and the Republic of Korea: Supplemental Questions,'' dated May 2, 2023 (General Issues Supplemental Questionnaire); ''Petitions for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa and Countervailing Duties on Imports from India, Israel, and the Republic of Korea: Supplemental Questions,'' dated May 10, 2023 (Second General Issues Supplemental Questionnaire); ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Brazil: 2nd Supplemental Questions,'' dated May 9, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from the Republic of Korea: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from the Republic of Korea: Supplemental Questions,'' dated May 9, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from the Republic of Korea: Supplemental Questions,'' dated May 12, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from the Republic of Korea: Supplemental Questions,'' dated May 15, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from South Africa: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from South Africa: Second Set of Supplemental Questions,'' dated May 9, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from South Africa: Third Set of Supplemental Questions,'' dated May 15, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from India: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from India: Supplemental Questions,'' dated May 9, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from India: Third Set of Supplemental Questions,'' dated May 15, 2023; Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Israel: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Israel: Second Supplemental Questionnaire,'' dated May 9, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Mexico: Supplemental Questions,'' dated May 2, 2023; ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Mexico: Second Set of Supplemental Questions,'' dated May 9, 2023; and ''Petition for the Imposition of Antidumping Duties on Imports of Brass Rod from Mexico: Third Set of Supplemental Questions,'' dated May 15, 2023.

[4] *See* Petitioners' Letters, ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated May 8, 2023 (General Issues Supplement), at Volumes I and II; ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Second Amendment of Petitions and Response to Commerce's Supplemental Questions'' dated May 11, 2023 (Scope Supplement), at Volumes I and II; ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Third Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated May 15, 2023; and ''Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea: Fourth Amendment of Petitions and Response to Commerce's Supplemental Questions,'' dated May 16, 2023.

[5] *See* Petitions at Volume I (pages 3–4).

[6] *See* the section on ''Industry Support for the Petitions,'' *infra.*

Israel, Mexico, Korea, and South Africa AD investigations are April 1, 2022, through March 31, 2023.

Scope of the Investigations

The products covered by these investigations are brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On May 2 and 10, 2023, Commerce requested further information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[7] On May 8 and 11, 2023, the petitioners revised the scope.[8] The description of the merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period of time for interested parties to raise issues regarding product coverage (*i.e.,* scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 6, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 16, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of the investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[11] An electronically-filed document must be received successfully in its entirety by the time and date it is due.[12]

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of brass rod to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production (COP) accurately, as well as to develop appropriate product comparison criteria where appropriate.

Subsequent to the publication of this notice, Commerce intends to release a proposed list of physical characteristics and product-comparison criteria, and interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe brass rod, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on June 6, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on June 16, 2023, which is ten calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for

[7] *See* General Issues Supplemental Questionnaire at 3–4; *see also* Second General Issues Supplemental Questionnaire at 3.

[8] *See* General Issues Supplement; *see also* Scope Supplement.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[11] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[12] *See* 19 CFR 351.303(b)(1).

[13] *See* section 771(10) of the Act.

different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[15] Based on our analysis of the information submitted on the record, we have determined that brass rod, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided their own production of brass rod in 2022 and compared this to the total 2022 production of brass rod by the U.S. industry.[17] We relied on data provided by the petitioners for purposes of measuring industry support.[18]

Our review of the data provided in the Petitions, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[19] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act, because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[22] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[23]

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioners contend that the industry's injured condition is illustrated by the significant volume of subject imports; reduced market share; underselling and price depression and/or suppression; lost sales and revenues; adverse impact on the domestic industry's operations, financial performance, production, commercial shipments, capacity utilization, and employment variables; and adverse impact on the domestic industry's financial performance.[25] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[26] In accordance with section 771(7)(G)(ii)(IV) of the Act, which states that the ITC cannot cumulate imports ''from any country that is party to an agreement with the United States establishing a free trade area, which entered into force and effect before January 1, 1987, unless the {ITC} determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country,'' we considered the petitioners' allegation of injury with respect to Israel, a party to an agreement with the United States establishing a free trade area in place and effect before January 1, 1987, independently of the allegations for Brazil, India, Korea, Mexico, and South Africa and found that the information provided satisfies the requirements for initiation.[27]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Country-Specific AD Initiation Checklists.

U.S. Price

For Israel, the petitioners based export price (EP) on pricing information obtained through market research for brass rod sold in Israel and offered for sale in the United States. The

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[15] *See* Petitions at Volume I (pages 19–20); *see also* General Issues Supplement at 5–7.

[16] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* AD Investigation Initiation Checklists, ''Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa,'' dated concurrently with this notice (Country-Specific AD Initiation Checklists), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa).

[17] *See* Petitions at Volume I (pages 4–5 and Exhibit GEN–1); *see also* General Issues Supplement at 5 and Exhibit SUPP1–GEN–3.

[18] *See* Petitions at Volume I (pages 3–5 and Exhibit GEN–1); *see also* General Issues Supplement at 5 and Exhibit SUPP1–GEN–3. For further discussion, *see* Country-Specific AD Initiation Checklists at Attachment II.

[19] *Id.*

[20] *See* Country-Specific AD Initiation Checklists at Attachment II; *see also* section 732(c)(4)(D) of the Act.

[21] *See* Country-Specific AD Initiation Checklists at Attachment II.

[22] *Id.*

[23] *Id.*

[24] *See* Petitions at Volume I (pages 21–22 and Exhibit GEN–5); *see also* General Issues Supplement at 7 and Exhibit SUPP1–GEN–4.

[25] *See* Petitions at Volume I (pages 1–2, 21–41, and Exhibits GEN–5 through GEN–25); *see also* General Issues Supplement at 7–8 and Exhibits SUPP1–GEN–4 and SUPP1–GEN–5.

[26] *See* Country-Specific AD Initiation Checklists at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Brass Rod from Brazil, India, Israel, the Republic of Korea, Mexico, and South Africa).

[27] *See* Country-Specific AD Initiation Checklists at Attachment III; *see also* section 771(7)(G)(ii)(IV) of the Act; and Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–216, Vol. 1 (1994), at 850 (''Imports from Israel may not be cumulated with imports from other countries unless the {ITC} first determines that the domestic industry is materially injured by reason of such imports from Israel.'').

petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where appropriate.[28]

For Brazil, India, and Korea, the petitioners based EP on transaction-specific average unit values (AUV) (*i.e.,* month- and port-specific AUVs) derived from official import data and tied to ship manifest data. For these countries, the petitioners did not make any adjustments to U.S. price to calculate a net ex-factory U.S. price.[29]

For Mexico and South Africa, the petitioners based EP on the AUVs derived from official import data for imports of brass rod from Mexico/South Africa into the United States during the POI. The petitioners did not make any adjustments to U.S. price to calculate a net ex-factory U.S. price.[30]

Normal Value [31]

For Brazil, Israel, and Mexico, the petitioners based NV on home market prices obtained through market research for brass rod produced in and sold, or offered for sale, in each country during the applicable time period.[32] Further, for Mexico, the petitioners made certain adjustments to home market price to calculate a net ex-factory home market price, where appropriate.[33]

For India, Korea, and South Africa, the petitioners stated they were unable to obtain home market or third country pricing information for brass rod to use as a basis for NV.[34] Therefore, for India, Korea, and South Africa, the petitioners calculated NV based on constructed value (CV).[35] For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value,'' below.

Normal Value Based on Constructed Value

As noted above, for India, Korea, and South Africa, the petitioners were unable to obtain home market or third country pricing information for brass rod to use as the basis for NV. Accordingly, the petitioners based NV on CV. Pursuant to section 773(e) of the Act, the petitioners calculated CV as the sum of the cost of manufacturing, selling, general, and administrative (SG&A) expenses, financial expenses, and profit.[36]

In calculating the cost of manufacturing, the petitioners relied on the production experience and input consumption rates of a U.S. producer of brass rod, valued using publicly-available information applicable to each respective country.[37] In calculating SG&A expenses, financial expenses, and profit ratios (where applicable), the petitioners relied on the calendar year 2022 financial statements of a producer of identical merchandise domiciled in each respective subject country or a third country, where appropriate.[38]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa, are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for brass rod for each of the countries covered by this initiation are as follows: (1) Brazil—77.14 percent; (2) India—16.52 percent; (3) Israel—40.12 percent; (4) Mexico—29.43 percent; (5) Korea—20.82; and (6) South Africa—20.99 percent.[39]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Respondent Selection

In the Petitions, the petitioners identified one company each in Brazil, India, Israel, and South Africa as producers/exporters of brass rod, and two companies each in Mexico and Korea, as producers/exporters of brass rod.[40] Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of exporters or producers is large such that Commerce cannot individually examine each company based on its resources, where appropriate, Commerce intends to select mandatory respondents in these cases based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States subheadings listed in the ''Scope of the Investigations,'' in the appendix.

On May 16, 2023, Commerce released CBP data on imports of brass rod from Brazil, India, Israel, Mexico, Korea, and South Africa under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of the notice of initiation of these investigations.[41] Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://access.trade.gov/Resources/Administrative_Protective_Order.aspx.*

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil, India, Israel, Mexico, Korea, and South Africa via ACCESS. To the extent practicable, we will attempt to provide a copy of the

[28] *See* Israel AD Initiation Checklist.

[29] *See* Brazil, India, Mexico, and Korea Country-Specific AD Initiation Checklists.

[30] *See* Mexico and South Africa Country-Specific AD Initiation Checklists.

[31] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

[32] *See* Country-Specific AD Initiation Checklists.

[33] *See* Petitions at Volume II (pages 6–7 and Exhibit AD–5).

[34] *See* Country-Specific AD Initiation Checklists.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *See* Country-Specific AD Initiation Checklists for details of the calculations.

[40] *See* Petitions at Volume I (pages 12–14 and Exhibit GEN–3).

[41] *See* Memoranda, ''Antidumping Duty Petition on Imports of Brass Rod from Brazil: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023; ''Antidumping Duty Petition on Imports of Brass Rod from India: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023; ''Antidumping Duty Petition on Imports of Brass Rod from Israel: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023; ''Antidumping Duty Petition on Imports of Brass Rod from Mexico: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023; ''Antidumping Duty Petition on Imports of Brass Rod from the Republic of Korea: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023; and ''Antidumping Duty Petition on Imports of Brass Rod from South Africa: Release of U.S. Customs and Border Protection Data,'' dated May 16, 2023.

public version of the AD Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of brass rod from Brazil, India, Israel, Mexico, Korea, and/or South Africa, are materially injuring, or threatening material injury to, a U.S. industry.[42] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[43] Otherwise, these AD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [44] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[45] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial response to section D of Commerce's AD questionnaire.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances, Commerce will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[46]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[47] Parties must use the certification formats provided in 19 CFR 351.303(g).[48] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letter of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[49]

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: May 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The products covered by these investigations are brass rod and bar (brass rod), which is defined as leaded, low-lead, and no-lead solid brass made from alloys such as, but not limited to the following alloys classified under the Unified Numbering System (UNS) as C27450, C27451, C27460, C34500, C35000, C35300, C35330, C36000, C36300, C37000, C37700, C48500, C67300, C67600, and C69300, and their international equivalents.

The brass rod subject to these investigations has an actual cross-section or outside diameter greater than 0.25 inches but less than or equal to 12 inches. Brass rod cross-sections may be round, hexagonal,

[42] *See* section 733(a) of the Act.

[43] *Id.*

[44] *See* 19 CFR 351.301(b).

[45] *See* 19 CFR 351.301(b)(2).

[46] *See* 19 CFR 351.302; *see also, e.g., Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[47] *See* section 782(b) of the Act.

[48] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[49] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

square, or octagonal shapes as well as special profiles (*e.g.,* angles, shapes).

Standard leaded brass rod covered by the scope contains, by weight, 57.0–65.0 percent copper; 0.5–3.0 percent lead; no more than 1.3 percent iron; and at least 15 percent zinc. No-lead or low-lead brass rod covered by the scope contains by weight 59.0–76.0 percent copper; 0–1.5 percent lead; no more than 0.35 percent iron; and at least 15 percent zinc. Brass rod may also include other chemical elements (*e.g.,* nickel, phosphorous, silicon, tin, *etc.*).

Brass rod may be in straight lengths or coils. Brass rod covered by these investigations may be finished or unfinished, and may or may not be heated, extruded, pickled, or cold-drawn. Brass rod may be produced in accordance with ASTM B16, ASTM B124, ASTM B981, ASTM B371, ASTM B453, ASTM B21, ASTM B138, and ASTM B927, but such conformity to an ASTM standard is not required for the merchandise to be included within the scope.

Excluded from the scope of these investigations is brass ingot, which is a casting of unwrought metal unsuitable for conversion into brass rod without remelting, that contains, by weight, at least 57.0 percent copper and 15.0 percent zinc.

The merchandise covered by these investigations is currently classifiable under subheadings 7407.21.9000, 7407.21.7000, and 7407.21.1500 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the scope may also enter under HTSUS subheadings 7403.21.0000, 7407.21.3000, and 7407.21.5000. The HTSUS subheadings and UNS alloy designations are provided for convenience and customs purposes. The written description of the scope of the investigations is dispositive.

[FR Doc. 2023–11002 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–913]

Certain Non-Refillable Steel Cylinders From India: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable May 17, 2023.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Zachariah Hall, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6241 and (202) 482–6261, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 27, 2023, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain non-refillable steel cylinders (cylinders) from India filed in proper form on behalf of Worthington Industries (the petitioner), a U.S. producer of cylinders.[1] The CVD petition was accompanied by an antidumping duty (AD) petition concerning imports of cylinders from India.[2]

On May 1 and 2, 2023, Commerce requested supplemental information pertaining to certain aspects of the Petition.[3] On May 5 and 8, 2023, the petitioner filed timely responses to these requests for additional information.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of India (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of cylinders in India, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing cylinders in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is supported by information reasonably available to the petitioner.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[5]

Period of Investigation

Because the Petition was filed on April 27, 2023, the period of investigation (POI) is January 1, 2022, through December 31, 2022.[6]

Scope of the Investigation

The products covered by the investigation are cylinders from India. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[7] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.[8] To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on June 6, 2023, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on June 16, 2023, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must also be filed simultaneously on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[9] An

[1] *See* Petitioner's Letter, ''Certain Non-Refillable Cylinders from India—Petition for the Imposition of Antidumping and Countervailing Duties,'' dated April 27, 2023 (Petition).

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Non-Refillable Steel Cylinders from India: Supplemental Questions,'' dated May 1, 2023; and ''Petition for the Imposition of Countervailing Duties on Imports of Certain Non-Refillable Steel Cylinders from India: Supplemental Questions,'' dated May 2, 2023.

[4] *See* Petitioner's Letters, ''Certain Non-Refillable Steel Cylinders from India—Petitioner's Amendment to Volume I Relating to General and Injury Information,'' dated May 3, 2023 (General Issues Supplement); and ''Certain Non-Refillable Steel Cylinders from India—Petitioner's Amendment to Volume III Relating to Countervailing Duties,'' dated May 8, 2023.

[5] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[6] *See* 19 CFR 351.204(b)(2).

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[8] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements,

electronically filed document must be received successfully in its entirety by the time and date it is due.[10]

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOI of the receipt of the Petition and provided it an opportunity for consultations with respect to the Petition.[11] Commerce held consultations with the GOI on May 10, 2023.[12]

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[13] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[14]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[15] Based on our analysis of the information submitted on the record, we have determined that cylinders, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[16]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2022.[17] The petitioner stated that there are no other known producers of cylinders in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[18] We relied on data provided by the petitioner for purposes of measuring industry support.[19]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[20] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[21] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[22] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[23]

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefiting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S.

effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[10] *See* 19 CFR 351.303(b)(1).

[11] *See* Commerce's Letter, ''Countervailing Duty Petition on Non-Refillable Steel Cylinders from India: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated April 28, 2023.

[12] *See* Memorandum, ''Consultations with Officials from the Government of India,'' dated May 11, 2023.

[13] *See* section 771(10) of the Act.

[14] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[15] *See* Petition at Volume I (pages 13–17); *see also* General Issues Supplement at 2 and Exhibits GEN–SUPP–1 and GEN–SUPP–2.

[16] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist, ''Certain Non-Refillable Steel Cylinders from India,'' dated concurrently with this notice (CVD Initiation Checklist), at Attachment II (Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from India).

[17] *See* Petition at Volume I (page 3 and Exhibit GEN–2).

[18] *Id.* at 2–3 and Exhibit GEN–1; *see also* General Issues Supplement at 2 and Exhibit GEN–1.

[19] *See* Petition at Volume I (pages 2–3 and Exhibits GEN–1 and GEN–2); *see also* General Issues Supplement at 2 and Exhibit GEN–SUPP–1. For further discussion, *see* the CVD Initiation Checklist at Attachment II.

[20] *See* CVD Initiation Checklist at Attachment II; *see also* section 702(c)(4)(D) of the Act.

[21] *See* CVD Initiation Checklist at Attachment II.

[22] *Id.*

[23] *Id.*

industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[24]

The petitioner contends that the industry's injured condition is illustrated by the significant and increasing volume of subject imports; declining market share; underselling and price depression and/or suppression; lost sales and revenues; and adverse impact on the domestic industry's capacity utilization, commercial shipments, employment variables, and financial performance.[25] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[26]

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of cylinders from India benefit from countervailable subsidies conferred by the GOI. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 51 of 52 alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* the India CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner identified five companies in India as producers and/or exporters of cylinders.[27] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event that Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. However, for this investigation, the main HTSUS subheadings under which the subject merchandise would enter (7311.00.0060 and 7311.00.0090,) are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We, instead, intend to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Exporters/producers of cylinders from India that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from Enforcement and Compliance's website at *https://access.trade.gov/resources/questionnaires/questionnaires-ad.html.* Responses to the Q&V questionnaire must be submitted by the relevant Indian producers/exporters no later than 5:00 p.m. ET on May 31, 2023, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOI via ACCESS. Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of cylinders from India are materially injuring, or threatening material injury to, a U.S. industry.[28] A negative ITC determination will result in the investigation being terminated.[29] Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [30] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[31] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which

[24] *See* Petition at Volume I (pages 12, 17–19, and Exhibits GEN–1 and GEN–11).

[25] *Id.* at 19–31 and Exhibits GEN–1 and GEN–8 through GEN–15; *see also* General Issues Supplement at 3 and Exhibits GEN–SUPP–3 and GEN–SUPP–4.

[26] *See* CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from India (Attachment III).

[27] *See* Petition at Volume I (Exhibit GEN–8).

[28] *See* section 703(a)(1) of the Act.

[29] *Id.*

[30] *See* 19 CFR 351.301(b).

[31] *See* 19 CFR 351.301(b)(2).

extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.[32]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[33] Parties must use the certification formats provided in 19 CFR 351.303(g).[34] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[35]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

[32] *See* 19 CFR 351.302; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[33] *See* section 782(b) of the Act.

[34] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[35] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Dated: May 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation specification 39, TransportCanada specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 100-cubic inch (1.6 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and are unfilled at the time of importation. Non-refillable steel cylinders filled with pressurized air otherwise meeting the physical description above are covered by this investigation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0030 and 7310.29.0065. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[FR Doc. 2023–11004 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD001]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) to discuss items on the Pacific Council's June 2023 meeting agenda. This meeting is open to the public.

DATES: The online meeting will be held on Friday, June 16, 2023, from 8:30 a.m. to 12:30 p.m., Pacific Time. The scheduled ending time for this GMT meeting is an estimate. The meeting will adjourn when business for the day is completed.

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

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; *todd.phillips@noaa.gov,* telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GMT webinar is to prepare for the Pacific Council's June 2023 meeting agenda items. The GMT will discuss items related to groundfish management and administrative matters on the Pacific Council's agenda. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*); (503) 820–2412 at least 10 days prior to the meeting date.

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

Dated: May 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10991 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC933]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Wednesday, June 21, 2023, from 2 p.m. to 5 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at *www.mafmc.org/council-events.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission when setting 2024–2025 catch and landings limits for summer flounder and scup, setting 2024 catch and landings limits for black sea bass, and reviewing other management measures for all three species.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: May 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–10990 Filed 5–23–23; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 24, 2023; 10:00 a.m.

PLACE: The meeting will be held virtually and in person at Bethesda, MD.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: *Briefing Matter.*

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: May 22, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023–11159 Filed 5–22–23; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent License to Hydronergy, Inc., Oak Park, IL

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army hereby gives notice of its intent to grant to Hydronergy, Inc.; a company having its principal place of business at 137 North Oak Park Avenue, Suite 215 4615, Oak Park, IL 60301, an exclusive license.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: Send written objections to U.S. Army Combat Capabilities Development Command Army Research Laboratory, Partnerships Support Office, FCDD–RLB–SS/Jason Craley, Building 4402, 6468 Integrity Ct., Aberdeen Proving Ground, MD 21005–5425 or email to *jason.c.craley.civ@army.mil.*

FOR FURTHER INFORMATION CONTACT: Jason Craley, (410) 306–1275, email: *jason.c.craley.civ@army.mil.*

SUPPLEMENTARY INFORMATION: The Department of the Army plans to grant an exclusive license to Hydronergy, Inc. in the following fields of use related to:

- Heat generation whether it be from diverting the unavoidable energy (heat) induced by the chemical reaction of nanogalvanized powder mixed with water, or burning hydrogen produced by mixing nanogalvanized powder with water. The generated heat will be used in buildings, homes, warehouses, swimming pools and industry needs such as heating, washing, cooking, sterilizing, drying, preheating of boiler feed water.

pertaining to the following;

—''Aluminum Based Nanogalvanic Compositions Useful for Generating Hydrogen Gas and Low Temperature Processing Thereof'', ARL 17–33, US Patent No. 11,198,923, Issue Date: 12/14/2021, US Patent Application No. 16/042,632, Filing Date: 07/23/2018, U.S. Publication No. 2019/0024216, Publication Date: 01/24/2019.

The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Combat Capabilities Development Command Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). Competing applications completed and received by the U.S. Army Combat Capabilities Development Command Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–11056 Filed 5–23–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intended Disinterment

AGENCY: Department of the Army, DoD.

ACTION: Notice of intended disinterment.

SUMMARY: The Office of Army Cemeteries (OAC) is honoring the requests of the family members to

disinter the human remains of five Native American students from the Carlisle Barracks Post Cemetery, Carlisle, Pennsylvania. The decedent names are: Edward Upright from the Spirit Lake Tribe, Amos LaFramboise from the Sisseton Wahpeton Oyate of the Lake Traverse Reservation, Beau Neal from the Northern Arapaho Tribe, Edward Spott from the Puyallup Tribe and Launy Shorty from the Blackfeet Nation. These students died between 1880 and 1910 while attending the Carlisle Indian Industrial School. See the **SUPPLEMENTARY INFORMATION** section of this document for more details.

DATES: The Army intends to begin disinterment activities on September 11, 2023. Transportation to and reinterment in private cemeteries will take place as soon as practical after the disinterment. If other living relatives object to the disinterment of these remains, please provide written objection to Captain Travis Fulmore at the email addresses listed below prior to July 1st, 2023. Such objections may delay the disinterment for the decedent in question.

ADDRESSES: Objections from family members and public comments can be mailed to Captain Travis Fulmore, OAC Project Manager, 1 Memorial Avenue, Arlington, VA 22211 or emailed to *usarmy.pentagon.hqda-anmc.mbx.accountability-coe@army.mil* (preferred).

FOR FURTHER INFORMATION CONTACT: Captain Travis Fulmore, OAC Project Manager, at 703–695–3570, or *usarmy.pentagon.hqda-anmc.mbx.accountability-coe@army.mil* (preferred).

SUPPLEMENTARY INFORMATION: OAC has received written requests for disinterment from the closest living descendent of each of the five individuals. OAC will disinter and facilitate the transport and reinterment of the remains to private cemeteries chosen by the families at government expense. This disinterment will be conducted under the authority of Army Regulation 290–5, in accordance with the Native American Graves Protection and Repatriation (NAGPRA) savings clauses at 25 U.S. Code 3009. Individually marked graves located within the Carlisle Barracks Post Cemetery do not constitute ''holdings or collections'' of the Army (§ 3003(a)) nor does NAGPRA (§ 3002) require the Army to engage in the intentional excavation or exhumation of a grave.

Additional information related to Native Americans buried at the Carlisle Barracks Post Cemetery can be found at *https://armycemeteries.army.mil/Cemeteries/Carlisle-Barracks-Main-Post-Cemetery*.

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2023–11037 Filed 5–23–23; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place.

DATES: DACOWITS will hold an open to the public meeting—Tuesday, June 27, 2023, from 8:00 a.m. to 11:30 a.m.

ADDRESSES: The meeting will take place at the Association of the United States Army Conference Center, located at 2425 Wilson Boulevard, Arlington, Virginia 22201. The meeting will also be held virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: COL Seana Jardin, Designated Federal Officer (DFO), (571) 232–7415 (voice), *seana.m.jardin.mil@mail.mil* (email). The most up-to-date changes to the meeting agenda can be found on the website: *https://dacowits.defense.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, U.S.C. (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), section 552b of title 5, United States Code (U.S.C.) (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 or any updates to the agenda, is available at the DACOWITS website, *https://dacowits.defense.gov/*. Materials presented in the meeting may also be obtained on the DACOWITS website.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive briefings and have discussions on topics related to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States.

Agenda: Tuesday, June 27, 2023, from 8:00 a.m. to 11:30 a.m.—Welcome, Introductions, Announcements, Request for Information Status Update, Briefings, Public Comment Period, and DACOWITS discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to availability of space, from 8:00 a.m. to 11:30 a.m. on June 27, 2023. The meeting will also be streamed by videoconference. The number of participants is limited and is on a first-come basis. Any member of the public who wishes to participate via videoconference must register by contacting DACOWITS at *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* or by contacting Mr. Robert Bowling at (703) 380–0116 no later than Monday, June 19, 2023. Once registered, the videoconference information will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Robert Bowling no later than Monday, June 19, 2023, so appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Monday, June 19, 2023, to Mr. Robert Bowling (703) 380–0116 (voice) or to *robert.d.bowling1.mil@mail.mil* (email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Members of the public interested in making an oral statement, must submit a written statement. If a statement is not received by Monday, June 19, 2023, it may not be provided to or considered by the Committee during this quarterly business meeting. After reviewing the written statements, the Chair and the DFO will determine if the requesting persons are permitted to make an oral presentation. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: May 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11053 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense (DoD), 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 Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Tuesday, May 30, 2023—Open to the public from 12:00 p.m. to 1:30 p.m. EST.

ADDRESSES: This public meeting will be held virtually. To receive meeting access, please submit your name, affiliation/organization, telephone number, and email contact information to the Committee at: *whs.pentagon.em.mbx.dacipad@mail.mil*.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DAC–IPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer (DFO), the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its May 30, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. 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.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the twenty-ninth public meeting held by the DAC–IPAD. At this meeting the Committee will discuss, deliberate, and vote on a stand-alone report: *Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, Uniform Code of Military Justice (UCMJ), and the Secretary of Defense's Disposition Guidance in Appendix 2.1, Manual for Courts-Martial (MCM).*

Agenda: 12:00 p.m.–12:05 p.m.—Opening Remarks. 12:05 p.m.–1:30 p.m.—Discussion, Deliberations, and Voting on Stand-Alone Report: *Reforming Pretrial Procedures and Establishing Uniform Prosecution Standards: Recommendations for Article 32, UCMJ, and the Secretary of Defense's Disposition Guidance in Appendix 2.1, MCM.* 1:30 p.m. Public Meeting Adjourns.

Meeting Accessibility: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(1), the public or interested organizations may submit written comments to the DAC–IPAD about its mission and topics pertaining to this public meeting. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the DAC–IPAD members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the FACA, all written comments will be treated as public documents and will be made available for public inspection.

Written Statements: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the DAC–IPAD. Individuals submitting a statement must submit their statement no later than 5:00 p.m. EST, Monday, May 29, 2023 to Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Monday, May 29, 2023, then it may not be provided to, or considered by, the Committee during the May 30, 2023 meeting. The DFO will review all timely submissions with the DAC–IPAD Chair and ensure such submissions are provided to the members of the DAC–IPAD before the meeting. Any comments received by the DAC–IPAD prior to the stated deadline will be posted on the DAC–IPAD website (*http://dacipad.whs.mil/*).

Dated: May 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–10989 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0046]

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 24, 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 Personnel Policy), ATTN: LTC Joel Parker, 4000 Defense Pentagon, Washington, DC 20301–4000 or call at (703) 695–5527.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Reference; DD Form 370; OMB Control Number 0704–0167.

Needs and Uses: The information collection requirement is necessary to obtain personal reference data to request a waiver on a military applicant who has committed a civil or criminal offense and would otherwise be disqualified for entry into the Armed Forces of the United States. The DD Form 370 is used to obtain references information evaluating the character, work habits, and attitudes of an applicant from a person of authority or standing within the community.

Affected Public: Individuals or households.

Annual Burden Hours: 1,083.

Number of Respondents: 6,500.

Responses per Respondent: 1.

Annual Responses: 6,500.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: May 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11086 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee (DoDWC); Notice of Federal Advisory Committee Meetings

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of closed Federal advisory committee meetings.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meetings of the DoDWC will take place.

DATES:

Tuesday, May 30, 2023, from 10:00 a.m. to 10:30 a.m. and will be closed to the public.

Tuesday, June 13, 2023, from 10:00 a.m. to 12:30 p.m. and will be closed to the public.

Tuesday, June 27, 2023, from 10:00 a.m. to 12:30 p.m. and will be closed to the public.

Tuesday, July 11, 2023, from 10:00 a.m. to 11:00 a.m. and will be closed to the public.

Tuesday, July 25, 2023, from 10:00 a.m. to 12:30 p.m. and will be closed to the public.

Tuesday, August 8, 2023, from 10:00 a.m. to 11:00 a.m. and will be closed to the public.

Tuesday, August 22, 2023 from 10:00 a.m. to 1:30 p.m. and will be closed to the public.

ADDRESSES: The closed meetings will be held by teleconference.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Fendt, (571) 372–1618 (voice), *karl.h.fendt.civ@mail.mil* (email), 4800 Mark Center Drive, Suite 05G21, Alexandria, Virginia 22350 (mailing address). Any agenda updates can be found at the DoDWC's official website: *https://wageandsalary.dcpas.osd.mil/BWN/DODWC/.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the DoD and the Designated Federal Officer (DFO) for the DoDWC, the DoDWC was unable to provide public notification required by 41 CFR 102–3.450(a) concerning its May 30, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

These meetings are 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.

Purpose of the Meeting: The purpose of these meetings is to provide independent advice and recommendations on matters relating to the conduct of wage surveys and the establishment of wage schedules for all appropriated fund and non-appropriated fund areas of blue-collar employees within the DoD.

Agendas

May 30, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Survey Specifications for the Albany, Georgia wage area (AC–036).

3. Survey Specifications for Northwestern Michigan wage area (AC–071).

4. Survey Specifications for the Tulsa, Oklahoma wage area (AC–111).

5. Survey Specifications for the Scranton-Wilkes Barre, Pennsylvania wage area (AC–117).

6. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

June 13, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Survey Specifications for the Hampden, Massachusetts wage area (AC–039).

3. Survey Specifications for the Middlesex, Massachusetts wage area (AC–138).

4. Survey Specifications for the York, Maine wage area (AC–139).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

5. Wage Schedule (Full Scale) for the New Haven-Hartford, Connecticut wage area (AC–024).

6. Wage Schedule (Full Scale) for the Albuquerque, New Mexico wage area (AC–089).

7. Wage Schedule (Full Scale) for the Cleveland, Ohio wage area (AC–105).

8. Wage Schedule (Full Scale) for the Texarkana, Texas wage area (AC–136).

9. Wage Schedule (Wage Change) for the Anniston-Gadsden, Alabama wage area (AC–001).

10. Wage Schedule (Wage Change) for the Huntsville, Alabama wage area (AC–004).

11. Wage Schedule (Wage Change) for the Tampa-St. Petersburg, Florida wage area (AC–035).

12. Wage Schedule (Wage Change) for the Lake Charles-Alexandria, Louisiana wage area (AC–060).

13. Wage Schedule (Wage Change) for the El Paso, Texas wage area (AC–132).

14. Survey Specifications for the San Diego, California wage area (AC–017).
15. Survey Specifications for the San Francisco, California wage area (AC–018).
16. Survey Specifications for the Pensacola, Florida wage area (AC–034).
17. Survey Specifications for the Central Illinois wage area (AC–046).
18. Survey Specifications for the Des Moines, Iowa wage area (AC–054).
19. Survey Specifications for the Baltimore, Maryland wage area (AC–066).
20. Survey Specifications for the Buffalo, New York wage area (AC–092).
21. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

June 27, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the McLennan, Texas wage area (AC–022).
3. Wage Schedule (Full Scale) for the Allegheny, Pennsylvania wage area (AC–066).
4. Wage Schedule (Full Scale) for the Jefferson, New York wage area (AC–101).
5. Wage Schedule (Full Scale) for the Orange, New York wage area (AC–103).
6. Wage Schedule (Full Scale) for the Macomb, Michigan wage area (AC–162).
7. Wage Schedule (Full Scale) for the Niagara, New York wage area (AC–163).
8. Wage Schedule (Wage Change) for the Cumberland, Pennsylvania wage area (AC–092).
9. Wage Schedule (Wage Change) for the York, Pennsylvania wage area (AC–093).
10. Wage Schedule (Wage Change) for the Honolulu, Hawaii wage area (AC–106).
11. Wage Schedule (Wage Change) for the Norfolk-Portsmouth-Virginia Beach, Virginia wage area (AC–111).
12. Wage Schedule (Wage Change) for the Hampton-Newport News, Virginia wage area (AC–112).
13. Wage Schedule (Wage Change) for the Harford, Maryland wage area (AC–148).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

14. Special Pay—Washington, District of Columbia TV Systems (AC–B027).
15. Special Pay—Washington, District of Columbia Electronic Equipment Maker (AC–A027).
16. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

July 11, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the Atlanta, Georgia wage area (AC–037).
3. Wage Schedule (Full Scale) for the Waco, Texas wage area (AC–137).
4. Wage Schedule (Wage Change) for the Shreveport, Louisiana wage area (AC–062).
5. Wage Schedule (Wage Change) for the Augusta, Maine wage area (AC–063).
6. Wage Schedule (Wage Change) for the Central North Carolina wage area (AC–099).
7. Wage Schedule (Wage Change) for the Norfolk-Portsmouth-Newport News-Hampton, Virginia wage area (AC–140).
8. Survey Specifications for the Cocoa Beach-Melbourne, Florida wage area (AC–028).
9. Survey Specifications for the Eastern South Dakota wage area (AC–121).
10. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

July 25, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the Tom Green, Texas wage area (AC–032).
3. Wage Schedule (Full Scale) for the Cobb, Georgia wage area (AC–034).
4. Wage Schedule (Full Scale) for the Columbus, Georgia wage area (AC–067).
5. Wage Schedule (Wage Change) for the Pennington, South Dakota wage area (AC–086).
6. Wage Schedule (Wage Change) for the Nueces, Texas wage area (AC–115).
7. Wage Schedule (Wage Change) for the Bexar, Texas wage area (AC–117).
8. Wage Schedule (Wage Change) for the Anchorage, Alaska wage area (AC–118).
9. Wage Schedule (Wage Change) for the Kitsap, Washington wage area (AC–142).
10. Wage Schedule (Wage Change) for the Dallas, Texas wage area (AC–152).
11. Wage Schedule (Wage Change) for the Tarrant, Texas wage area (AC–156).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

12. Wage Schedule (Full Scale) for the Savannah, Georgia wage area (AC–042).
13. Wage Schedule (Full Scale) for the Western Texas wage area (AC–127).
14. Wage Schedule (Wage Change) for the Columbia, South Carolina wage area (AC–120).
15. Survey Specifications for the Davenport-Rock Island-Moline, Iowa wage area (AC–053).
16. Survey Specifications for the Southwestern Michigan wage area (AC–073).
17. Survey Specifications for the Philadelphia, Pennsylvania wage area (AC–115).
18. Special Pay—Western Texas Special Rate.
19. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

August 8, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.
2. Wage Schedule (Full Scale) for the Augusta, Georgia wage area (AC–038).
3. Wage Schedule (Full Scale) for the Macon, Georgia wage area (AC–041).
4. Wage Schedule (Full Scale) for the Southeastern Washington-Eastern Oregon wage area (AC–144).
5. Wage Schedule (Wage Change) for the Hawaii wage area (AC–044).
6. Wage Schedule (Wage Change) for the Central & Western Massachusetts wage area (AC–069).
7. Wage Schedule (Wage Change) for the Southwestern Wisconsin wage area (AC–149).
8. Special Pay—Macon, Georgia Special Rates.
9. Special Pay—Southeastern Washington-Eastern Oregon Special Rates.
10. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

August 22, 2023

Opening Remarks by Chair and DFO.

Reviewing survey results and/or survey specifications for the following Nonappropriated Fund areas:

1. Any items needing further clarification or action from the previous agenda.

2. Wage Schedule (Full Scale) for the Hennepin, Minnesota wage area (AC–015).

3. Wage Schedule (Full Scale) for the Grand Forks, North Dakota wage area (AC–017).

4. Wage Schedule (Full Scale) for the Davis-Weber-Salt Lake, Utah wage area (AC–018).

5. Wage Schedule (Full Scale) for the Ada-Elmore, Idaho wage area (AC–038).

6. Wage Schedule (Full Scale) for the Cascade, Montana wage area (AC–040).

7. Wage Schedule (Full Scale) for the Spokane, Washington wage area (AC–043).

8. Wage Schedule (Wage Change) for the Arapahoe-Denver, Colorado wage area (AC–084).

9. Wage Schedule (Wage Change) for the El Paso, Colorado wage area (AC–085).

10. Wage Schedule (Wage Change) for the Laramie, Wyoming wage area (AC–087).

11. Wage Schedule (Wage Change) for the New London, Connecticut wage area (AC–136).

12. Wage Schedule (Wage Change) for the Snohomish, Washington wage area (AC–141).

13. Wage Schedule (Wage Change) for the Pierce, Washington wage area (AC–143).

14. Wage Schedule (Wage Change) for the Newport, Rhode Island wage area (AC–167).

15. Survey Specifications for the Washoe-Churchill, Nevada wage area (AC–011).

16. Survey Specifications for the Orange, Florida wage area (AC–062).

17. Survey Specifications for the Bay, Florida wage area (AC–063).

18. Survey Specifications for the Escambia, Florida wage area (AC–064).

19. Survey Specifications for the Okaloosa, Florida wage area (AC–065).

20. Survey Specifications for the Clark, Nevada wage area (AC–140).

Reviewing survey results and/or survey specifications for the following Appropriated Fund areas:

21. Wage Schedule (Full Scale) for the Duluth, Minnesota wage area (AC–074).

22. Wage Schedule (Full Scale) for the San Antonio, Texas wage area (AC–135).

23. Wage Schedule (Full Scale) for the Milwaukee, Wisconsin wage area (AC–148).

24. Wage Schedule (Wage Change) for the Central & Northern Maine wage area (AC–064).

25. Wage Schedule (Wage Change) for the Asheville, North Carolina wage area (AC–098).

26. Wage Schedule (Wage Change) for the Southwestern Oregon wage area (AC–113).

27. Wage Schedule (Wage Change) for the Austin, Texas wage area (AC–129).

28. Wage Schedule (Wage Change) for the Corpus Christi, Texas wage area (AC–130).

29. Survey Specifications for the Wilmington, Delaware wage area (AC–026).

30. Survey Specifications for the Topeka, Kansas wage area (AC–056).

31. Survey Specifications for the Wichita, Kansas wage area (AC–057).

32. Survey Specifications for the Biloxi, Michigan wage area (AC–076).

33. Survey Specifications for the Roanoke, Virginia wage area (AC–142).

34. Any items needing further clarification from this agenda may be discussed during future scheduled meetings.

Closing Remarks by Chair.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b(c)(4), the DoD has determined that the meetings shall be closed to the public. The USD(P&R), in consultation with the DoD Office of General Counsel, has determined in writing that each of these meetings is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Written Statements: Pursuant to section 1009(a)(3) of the FACA and 41 CFR 102–3.140, interested persons may submit written statements to the DFO for the DoDWC at any time. Written statements should be submitted to the DFO at the email or mailing address listed in the **FOR FURTHER INFORMATION CONTACT** section. If statements pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the DoDWC until its next meeting. The DFO will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice.

Dated: May 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11069 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0047]

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services (WHS), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the WHS 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 24, 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 Mr. Dean Myers, (703) 693–3683, Federal Docket Management System Office, 4800 Mark Center Drive,

East Tower, Suite 02G09, Alexandria, VA 22350–3100.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Scooter Registration Form; SD Form 0836; OMB Control Number 0704–0592.

Needs and Uses: Washington Headquarters Services (WHS) needs to collect this information to be able to manage personal mobility devices (PMDs) issued to individuals that have received approval from their employer to use such equipment.

Affected Public: Individuals and households.

Annual Burden Hours: 66.

Number of Respondents: 33.

Responses per Respondent: 1.

Annual Responses: 33.

Average Burden per Response: 2 hours.

Frequency: On occasion.

Dated: May 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11093 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0017]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, 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 23, 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: Child Annuitant's School Certification; DD Form 2788; OMB Control Number 0730–0001.

Type of Request: Extension without change.

Number of Respondents: 7,200.

Responses per Respondent: 1.

Annual Responses: 7,200.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,600.

Needs and Uses: Child annuitants, between the ages of 18 and 22 years of age, must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided. Without this certification, funds cannot be released to annuitant/payee.

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 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11071 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0015]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, 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 23, 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:* Custodianship Certification to Support Claims on Behalf of Minor Children of Deceased Members of the Armed Forces; DD Form 2790; OMB Control Number 0730–0010.

Type of Request: Extension.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 24 minutes.

Annual Burden Hours: 120.

Needs and Uses: Per DoD Financial Management Regulation, 7000.14–R, Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

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 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11077 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0018]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, 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 23, 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: Application for Former Spouse Payments from Retired Pay, DD Form 2293; OMB Number 0730–0008.

Type of Request: Extension without change.

Number of Respondents: 25,000.

Responses for Respondents: 1.

Annual Responses: 25,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 12,500.

Needs and Uses: The information collection requirement is necessary to provide DFAS with the basic data needed to process court orders for division of military retired pay as property or order alimony and child support payment from that retired pay per title 10 U.S.C. 1408.

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 19, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–11072 Filed 5–23–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of Strategies To Address Unfinished Learning in Math (ReSolve Math Study)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 23, 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 Thomas Wei, (646) 428–3892.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of Strategies to Address Unfinished Learning in Math (ReSolve Math Study).

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 12,640.

Total Estimated Number of Annual Burden Hours: 2,559.

Abstract: The COVID–19 pandemic led to substantial unfinished learning in math and an important debate about how best to address it. Traditionally, policymakers and educators have advocated a ''broad foundation skill building'' approach, but an alternative ''just-in-time skill building'' approached has received more attention recently, including in the U.S. Department of Education's COVID–19 Handbook. But there is limited evidence comparing these approaches. This evaluation will examine the effectiveness of adaptive technology products that deliver these two catch-up strategies in elementary schools, where teachers often struggle with how to teach math well and the benefits of using technology supports are understudied. The findings will provide valuable evidence, especially for low-performing schools identified under the Every Student Succeeds Act and their most underserved students. This package requests approval for data collection activities to conduct the evaluation.

Dated: May 18, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–10997 Filed 5–23–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0092]

Agency Information Collection Activities; Comment Request; Loan Discharge Application: Forgery

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 July 24, 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–0092. 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 Beth Grebeldinger, (202) 377–4018.

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: Loan Discharge Application: Forgery.

OMB Control Number: 1845–0148.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 2,786.

Total Estimated Number of Annual Burden Hours: 2,786.

Abstract: This is a request for an extension of the information collection for the form used to obtain information from federal student loan borrowers who allege that the loans in their name were the result of a forgery. This information is used by the Secretary to make a determination of forgery for the Direct Loans, FFEL Program Loans, and Federal Perkins Loans held by the Department. This information collection stems from the common law legal principal of forgery, which is not reflected in the Department's statute or regulations, but with which the Department must comply.

Dated: May 18, 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. 2023–10992 Filed 5–23–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Teacher and School Leader Incentive Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2023 for the Teacher and School Leader Incentive Program (TSL), Assistance Listing Number 84.374A. This notice relates to the approved information collection under OMB control number 1810–0758.

DATES:

Applications Available: May 24, 2023.

Pre-Application Webinars: The Office of Elementary and Secondary Education intends to post pre-recorded informational webinars designed to provide technical assistance to interested applicants for TSL grants. These informational webinars will be available on the TSL web page shortly

after this notice is published in the **Federal Register** at *oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-and-school-leader-incentive-program/applicant-info-eligibility/.* A TSL Frequently Asked Questions document will also be published on the TSL program web page as soon as it is available at *https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/effective-educator-development-programs/teacher-and-school-leader-incentive-program/.*

Deadline for Notice of Intent to Apply: June 7, 2023.

Deadline for Transmittal of Applications: June 28, 2023.

Deadline for Intergovernmental Review: August 28, 2023.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Cynthia Hunter, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–5960. Telephone: 202–401–3584. Email: *cynthia.hunter@ed.gov* or *TSL@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of TSL is to assist States, local educational agencies (LEAs), and nonprofit organizations to develop, implement, improve, or expand comprehensive performance-based compensation systems (PBCS) or human capital management systems (HCMS) for teachers, principals, or other school leaders (as defined in this notice) (especially for teachers, principals, or other school leaders in high-need schools who raise student growth and academic achievement and close the achievement gap between high- and low-performing students. In addition, a portion of TSL funds may be used to study the effectiveness, fairness, quality, consistency, and reliability of PBCS or HCMS for educators. Many of the terms used here are defined terms and can be found in the ''Definitions'' section of this notice.

Background: TSL is authorized under section 2212 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

The Department is committed to strengthening the education workforce through its Raise the Bar: Lead the World [1] initiative. The Department's call to action seeks to transform P–12 education by promoting academic excellence, boldly improving learning conditions, and preparing our Nation's students for global competitiveness. Consistent with that call to action, the priorities used in this competition advance Raise the Bar's goals to boldly improve learning conditions by eliminating educator shortages, including through effective teacher retention efforts such as career advancement opportunities for teachers.

The FY 2023 TSL competition is designed to support entities in implementing, improving, or expanding their HCMS, which by definition must include a PBCS; or in implementing, improving, or expanding their PBCS. TSL is also intended to primarily serve educators in high-need schools who raise student growth and academic achievement and close the achievement gap between high- and low-performing students, although the program may also fund services for educators serving in high-need subject areas (though not necessarily in high-need schools), as determined by the LEA or by the State.

Many States and LEAs have worked to create and improve their comprehensive HCMS, and LEAs have invested in high-quality educator evaluation and support systems to improve recruitment and retention efforts, provide educators with meaningful feedback and targeted professional development, and use educator performance data to inform key school- and district-level decisions. While an increasing number of LEAs are well-equipped to make human capital decisions that both support educators and improve student outcomes, additional work is needed to ensure that these educator evaluation and support systems are fair, reliable, and credible; conducive to enhancing educator growth and advancement; likely to support improved student outcomes; and seamlessly integrated into school- and district-level human capital processes. Absolute Priority 1, which focuses on human capital management systems (HCMS) or performance-based compensation systems (PBCS) and career advancement opportunities, will support LEAs in this work.

In addition, Absolute Priority 1 requires applicants to address how they will support career advancement opportunities for educators. Teacher leadership models and activities provide experienced and effective teachers leadership opportunities that allow them to have a greater impact on their school community while remaining in the classroom and being compensated for additional responsibilities. This could include, for example, distributive leadership models which allow teachers to lead alongside their principal to facilitate positive schoolwide change; teacher-led instructional improvement efforts focused on specific areas of academic content; opportunities to shape schoolwide policies and climate, and lead professional learning communities; participation in master teacher programs, teacher mentorship programs, and job-embedded content coaching; and the implementation of advisory systems. These leadership opportunities support academic success for students while creating career ladders that support teacher retention.

Absolute Priority 2 requires applicants to concentrate TSL-funded grant project activities to support teachers, principals, or other school leaders in high-need schools. In 2021, the Department clarified and simplified the expectation that TSL-funded grant activities primarily serve high-need schools by establishing a new definition of high-need schools that modified how applicants identify high-need schools for the purposes of the TSL Program.

Through the two absolute priorities listed in this notice, the Department seeks to promote and support States and LEAs in their efforts to implement goals and objectives as well as lessons learned from close to two decades of investment and research in HCMS and PBCS. In addition to two absolute priorities, this notice includes two competitive preference priorities focused on diversifying and strengthening the educator workforce and promoting equitable access to high quality educators.

Competitive Preference Priority 1 emphasizes the importance of promoting equitable student access to educational resources and opportunities through continued professional development and enrichment opportunities that grow and retain our Nation's best educators.

It is well established that teacher effectiveness contributes greatly to

[1] *https://www.ed.gov/raisethebar.*

student academic outcomes, and with the learning setbacks students have experienced nationwide due to the COVID–19 pandemic, there is even more urgency to ensure that students have equitable access to effective teachers, particularly for students from low-income backgrounds, students of color, English learners, and students with disabilities, who experienced more substantial learning loss.[2] In 2022, the National Center for Education Statistics (NCES) studied the National Assessment of Educational Progress's long-term trend data, which revealed that the average scores for 9-year-old students declined 5 points in reading and 7 points in mathematics between 2020 and 2022. While these scores represent the largest average score decline in reading since 1990, and the first ever score decline in mathematics, the downward trajectory in scores was even more dramatic for already lower-performing students.[3] Since educators represent the most significant in-school factor for student outcomes, it is essential to attract, develop, and retain a well-qualified, experienced, effective, and diverse pool of highly skilled and effective teachers who are prepared to teach diverse groups of learners (*e.g.,* through co-teaching models, dual certifications, universal design for learning), particularly in high-need schools.

Research funded by the Department's Institute of Education Sciences concluded that student achievement can improve by as much as 21 percentile points when teachers participate in well-designed professional development programs.[4] Because widespread teacher shortages have worsened in recent years as a result of the pandemic, schools must focus on reducing educator attrition rates by recruiting and retaining a high-quality, skilled workforce. This is especially true for high-need schools where, according to education scholars,[5] teacher shortages historically have been more severe.

Competitive Preference Priority 2 supports the critical need to increase the diversity of the educator workforce. This competitive preference priority focuses on the essential role a diverse educator workforce plays in ensuring equity in our education system and the urgency in addressing the needs of diversifying the educator pipeline, consistent with the Department's Raise the Bar: Lead the World call to action.[6] Studies suggest that all students benefit from having teachers of color. For students of color, exposure to teachers of their race or ethnicity has a positive effect on the students' academic and social achievement, and increases attendance, the likelihood of high school graduation, and college attendance. White students also benefit academically and socially from having teachers from diverse backgrounds, who support students in gaining accurate perceptions of our society.[7] [8]

However, despite evidence that points to the importance of a diverse educator workforce, educator representation disparities persist. NCES data indicates that more than 50 percent of public school students are students of color, yet in 2017–18, the most recent year of available data, roughly 25 percent of teachers were teachers of color.[9] And despite English learners representing the fastest growing public school student demographic, most States face a shortage of bilingual and multilingual teachers prepared and certified to adequately educate English learner students.[10]

Teacher workforce data from the last 30 years shows that the number of teachers of color hired by the country's schools has increased at a faster rate than the number of white teachers; however, teachers of color leave at a much higher rate than their white counterparts.[11] In its 2021 State of the U.S. Teacher Survey,[12] RAND Corporation researchers found that nearly 50 percent of Black teachers reported in the winter of 2021 that they would likely vacate their positions at the conclusion of the school year, compared to 23 percent of teachers overall, citing a variety of reasons such as lack of respect, workplace discrimination, lower wages, lack of adequate resources, disenfranchisement, and unrealistic job expectations.[13] The Department is interested in strategies that support a diverse workforce through recruitment, development, and retention. As such, this competitive preference priority focuses on activities designed to strengthen educator diversity through a broader lens of equity, with an emphasis on recruitment, support, and retention. We note that, although Competitive Preference Priority 2 refers to such activities in ''high-poverty'' school districts, consistent with Absolute Priority 2, all projects must be focused on ''high-need schools''.

In addition to implementing strong induction and mentoring programs, improving workplace culture by creating inclusive environments, and reducing job related stress, studies show that creating and maintaining strong relationships with organizations that prepare teachers of color is another high-yield strategy in recruiting and retaining minority educators.[14] Historically Black Colleges and Universities (HBCUs), for example, have prepared African American educators and leaders and provide a strong pipeline for educators of color.

[2] U.S. Department of Education, Office of Civil Rights, Education in a Pandemic: The Disparate Impacts of COVID–19 on America's Students. *www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf.*

[3] U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress, 2020 and 2022 Long-Term Trend Reading and Mathematics Assessments. The Nation's Report Card, *https://www.nationsreportcard.gov/highlights/ltt/2022/.*

[4] Yoon, K.S., Duncan, T., Lee, S.W.-Y., Scarloss, B., & Shapley, K. (2007). *Reviewing the evidence on how teacher professional development affects student achievement* (Issues & Answers Report, REL 2007–No. 033). Washington, DC: U.S. Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, Regional Educational Laboratory Southwest. Retrieved from *http://ies.ed.gov/ncee/edlabs.*

[5] Garcia, E., Kraft, M.A., and Schwartz, H.L. *Are we at a crisis point with the public teacher workforce? Education scholars share their perspectives.* Brookings, 26 August 2022, *https://www.brookings.edu/blog/brown-center-chalkboard/2022/08/26/are-we-at-a-crisis-point-with-the-public-teacher-workforce-education-scholars-share-their-perspectives/#:~:text=As%20of%20March%202022%2C%2058,anticipated%20a%20%E2%80%9Clarge%20shortage.%E2%80%9D.*

[6] *www2.ed.gov/about/inits/ed/raise-the-bar/executive-summary.pdf.*

[7] Cherng, H.Y.S., & Halpin, P.F. (2016). The importance of minority teachers: Student perceptions of minority versus White teachers. *Educational Researcher, 45*(7), 407–420; Irvine, J.J. (1988). An analysis of the problem of disappearing Black educators. *Elementary School Journal, 88*(5), 503–514.

[8] Figlio, David. *The importance of a diverse teaching force.* Brookings, 16 November 2017, *https://www.brookings.edu/research/the-importance-of-a-diverse-teaching-force/.* Blazar, David. (2022). How and Why Do Black Teachers Benefit Students?: An Experimental Analysis of Causal Mediation. (EdWorkingPaper: 21–501). Retrieved from Annenberg Institute at Brown University: *https://doi.org/10.26300/jym0-wz02.*

[9] U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, National Assessment of Educational Progress, Race and Ethnicity of Public School Teachers and Their Students. Data Point, *https://nces.ed.gov/pubs2020/2020103/index.asp?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term.*

[10] See id.

[11] Carr, Sarah. *Public Schools Are Struggling to Retain Black Teachers. These Ex-Teachers Explain Why.* Time, 5 January 2022, *https://time.com/6130991/black-teachers-resigning/.*

[12] Steiner, Elizabeth D. and Ashley Woo, Job-Related Stress Threatens the Teacher Supply: Key Findings from the 2021 State of the U.S. Teacher Survey. Santa Monica, CA: RAND Corporation, 2021. *https://www.rand.org/pubs/research_reports/RRA1108-1.html.*

[13] Carr, Sarah. *Public Schools Are Struggling to Retain Black Teachers. These Ex-Teachers Explain Why.* Time, 5 January 2022, *https://time.com/6130991/black-teachers-resigning/.*

[14] See id.

Although they make up only 3 percent of the Nation's colleges and universities, for example, HBCUs prepare nearly 50 percent of the Nation's African American teachers.[15] HBCUs are indispensable to producing and advancing educational opportunities for students of color, first-generation, and underrepresented students who are interested in the teaching profession.[16] In many urban and rural communities, HBCUs produce high numbers of teachers who work in the local school divisions.[17] Leveraging the HBCU network to recruit teachers of color is a high impact way to diversify the educator pipeline and, in turn, advance student growth and achievement.

Priorities: This notice contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(v), Absolute Priority 1 is from ESEA section 2212(e)(1) and (2)(F); and Absolute Priority 2 is from the TSL Notice of Final Priority and Definition, published in the **Federal Register** on July 9, 2021 (86 FR 36220) (TSL NFP). In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priorities 1 and 2 are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grants Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Absolute Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both absolute priorities.

These priorities are:

Absolute Priority 1—Human Capital Management Systems (HCMS) or Performance Based Compensation Systems (PBCS) and Career Advancement Opportunities.

Under this priority, eligible applicants must propose a project to (1) develop, implement, improve, or expand, in collaboration with teachers, principals, other school leaders, and members of the public, a PBCS or HCMS; and (2) institute career advancement opportunities characterized by increased responsibility and pay that reward and recognize effective teachers, principals, or other school leaders in high-need schools and enable them to expand their leadership and results, such as through teacher-led professional development, mentoring, coaching, hybrid roles, administrative duties, and career ladders.

Applicants that propose to use grant funds, under ESEA section 2212(e)(2)(A), to develop or improve an evaluation and support system as part of an HCMS, in responding to this priority, must describe how such system—

(a) Reflects clear and fair measures of educator performance, based in part on demonstrated improvement in student academic achievement; and

(b) Provides educators with ongoing, differentiated, targeted, and personalized support and feedback for improvement, including professional development opportunities designed to increase effectiveness.

Absolute Priority 2—High-Need Schools.

Under this priority, eligible applicants must concentrate proposed activities on teachers, principals, or other school leaders serving in high-need schools.

In order to demonstrate that the TSL project is concentrated in high-need schools, the applicant must—

(a) Provide the requested data in paragraph (c) of this priority to demonstrate that at least the majority of the schools participating in the proposed project are high-need schools and describe how the TSL-assisted grant activities are focused on those schools;

(b) Include a list of all schools in which the proposed TSL-funded project would be implemented and indicate which schools are high-need schools; and

(c) Provide the most recently available school-level data supporting each school's designation as a high-need school.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to 5 points to an application, depending on how well the application meets Competitive Preference Priority 1. We award up to an additional 5 points to an application depending on how well the application meets Competitive Preference Priority 2. An application may be awarded a maximum of 10 additional points under the competitive preference priorities.

These priorities are:

Competitive Preference Priority 1—Promoting Equity in Student Access to Educational Resources and Opportunities. (up to 5 points)

Under this priority, an applicant must demonstrate that the applicant proposes a project designed to promote educational equity and adequacy in resources and opportunity for underserved students—

(a) In one or more of the following educational settings:

(1) Elementary school.

(2) Middle school.

(3) High school.

(4) Career and technical education programs.

(b) That examines the sources of inequity and inadequacy and implement responses, and that may include one or more of the following:

(1) Increasing the number and proportion of experienced, fully certified, in-field, and effective educators, and educators from traditionally underrepresented backgrounds or the communities they serve, to ensure that underserved students have educators from those backgrounds and communities and are not taught at disproportionately higher rates by uncertified, out-of-field, and novice teachers compared to their peers.

(2) Improving the retention of fully certified, experienced, and effective educators in high-need schools or shortage areas.

Competitive Preference Priority 2—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning. (up to 5 points)

Projects that are designed to increase the proportion of well-prepared, diverse, and effective educators serving students, with a focus on underserved students, through building or expanding high-poverty school districts' capacity to hire, support, and retain an effective and diverse educator workforce, by developing data systems, timelines, and action plans for promoting inclusive and bias-free human resources practices that promote and support development of educator diversity.

Application Requirements: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following application requirements from ESEA section 2212(c) apply.

Each eligible applicant desiring a grant under this program must submit an application that contains—

(i) A description of the PBCS or HCMS that the eligible entity proposes to develop, implement, improve, or expand through the grant;

(ii) A description of the most significant gaps or insufficiencies in student access to effective educators in high-need schools, including gaps or

[15] See id.

[16] Fenwick, L. (2016). Teacher preparation innovation and historically black colleges and universities (HBCUs). *Teaching Works working papers*. University of Michigan. *http://www.teachingworks.org/images/files/TeachingWorks_Fenwick.pdf.*

[17] See id.

inequities in how effective educators are distributed across the LEA, as identified using factors such as data on school resources, staffing patterns, school environment, educator support systems, and other school-level factors;

(iii) A description and evidence of the support and commitment from educators, which may include charter school leaders, in the school (including organizations representing educators), the community, and the LEA to the activities proposed under the grant;

(iv) A description of how the eligible entity will develop and implement a fair, rigorous, valid, reliable, and objective process to evaluate educator performance under the system that is based in part on measures of student academic achievement, including the baseline performance against which evaluations of improved performance will be made;

(v) A description of the LEAs or schools to be served under the grant, including student academic achievement, demographic, and socioeconomic information;

(vi) A description of the effectiveness of educators in the LEA and the schools to be served under the grant and the extent to which the system will increase the effectiveness of educators in such schools;

(vii) A description of how the eligible entity will use grant funds under section 2212 of the ESEA in each year of the grant, including a timeline for implementation of such activities;

(viii) A description of how the eligible entity will continue the activities assisted under the grant after the grant period ends;

(ix) A description of the State, local, or other public or private funds that will be used to supplement the grant, including funds under Title II, part A of the ESEA, and sustain the activities assisted under the grant after the end of the grant period;

(x) A description of—

(A) The rationale for the project;

(B) How the proposed activities are evidence-based (as defined in this notice); and

(C) If applicable, the prior experience of the eligible entity in developing and implementing such activities.

Definitions: The definitions of ''human capital management system'' and ''performance-based compensation system'' are from section 2211 of the ESEA. The definitions of ''evidence-based'' and ''school leader'' are from section 8101 of the ESEA. The definitions of ''demonstrates a rationale,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbooks (WWC Handbooks)'' are from 34 CFR 77.1. The definition of ''high-need school'' is from the TSL NFP. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''educator,'' ''English learner,'' and ''underserved student'' are from the Supplemental Priorities. These definitions apply to the FY 2023 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

English learner means an individual who is an English learner as defined in section 8101(20) of the ESEA or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Evidence-based, when used with respect to a State, LEA, or school activity, means an activity, strategy, or intervention that—

(i) Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—

(A) Strong evidence from at least one well-designed and well-implemented experimental study;

(B) Moderate evidence from at least one well-designed and well-implemented quasi-experimental study; or

(C) Promising evidence from at least one well-designed and well-implemented correlational study with statistical controls for selection bias; or

(ii)(A) Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and

(B) Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbooks:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-need school means a school with 50 percent or more of its enrollment from low-income families as calculated using—

(a) The number of children eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) (or, if an LEA does not participate in the NSLP, comparable data from another source such as a survey);

(b) If an LEA has one or more schools that participate in the Community Eligibility Provision (CEP) of the NSLP, for any of its schools (*i.e.,* CEP and non-

CEP schools), the method in paragraph (a) of this definition or an alternative method approved by the Department; and

(c) For middle and high schools, data from feeder schools that can establish that the middle or high school is a high-need school under paragraph (a) or (b) of this definition.

Human Capital Management System (HCMS) means a system—

(i) By which an LEA makes and implements human capital decisions, such as decisions on preparation, recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion; and

(ii) That includes a performance-based compensation system.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Performance-Based Compensation System (PBCS) means a system of compensation for teachers, principals, or other school leaders—

(i) That differentiates levels of compensation based in part on measurable increases in student academic achievement; and

(ii) Which may include—

(A) Differentiated levels of compensation, which may include bonus pay, on the basis of the employment responsibilities and success of effective teachers, principals, or other school leaders in hard-to-staff schools or high-need subject areas; and

(B) Recognition of the skills and knowledge of teachers, principals, or other school leaders as demonstrated through—

(I) Successful fulfillment of additional responsibilities or job functions, such as teacher leadership roles; and

(II) Evidence of professional achievement and mastery of content knowledge and superior teaching and leadership skills.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbooks.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

School leader means a principal, assistant principal, or other individual who is—

(i) An employee or officer of an elementary school or secondary school, LEA, or other entity operating an elementary school or secondary school; and

(ii) Responsible for the daily instructional leadership and managerial operations in the elementary school or secondary school building.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC

using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Underserved student means a student (which may include children in early learning environments, students in K–12 programs, students in career and technical education, as appropriate) in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A technologically unconnected youth.

(h) A migrant student.

(i) A student experiencing homelessness or housing insecurity.

(j) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(k) A student who is in foster care.

(l) A student without documentation of immigration status.

(m) A pregnant, parenting, or caregiving student.

(n) A student impacted by the justice system, including a formerly incarcerated student.

(o) A student who is the first in their family to attend postsecondary education.

(p) A student performing significantly below grade level.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see § 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Note: The What Works Clearinghouse Procedures and Standards Handbook (Version 4.1), as well as the more recent What Works Clearinghouse Handbooks released in August 2022 (Version 5.0), are available at *https://ies.ed.gov/ncee/wwc/Handbooks.*

Program Authority: Sections 2211–2213 of the ESEA.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The TSL NFP. (e) The Supplemental Priorities.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Type of Award: Discretionary grants.

Estimated Available Funds: $95,452,236.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000 to $8.5 million.

Note: The Department estimates a wide range of awards, given the potentially large differences in the scope of funded projects, including the size and number of participating LEAs.

Estimated Average Size of Awards: $4,300,000.

Estimated Number of Awards: 20–25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) An LEA, including a charter school that is an LEA, or a consortium of LEAs;

(b) A State educational agency (SEA) or other State agency designated by the Chief Executive of a State to participate;

(c) The Bureau of Indian Education; or

(d) A partnership consisting of—

(i) One or more agencies described in paragraph (a), (b), or (c); and

(ii) At least one nonprofit or for-profit entity.

Note: For the purpose of this program, the Secretary considers all schools funded by the Department of Interior's Bureau of Indian Education to be LEAs under section 8101(30)(C) of the ESEA.

Note: Under section 2212(b)(3) of the ESEA, an LEA may receive (whether individually or as part of a consortium or partnership) a grant under the TSL program only twice.

2. a. *Cost Sharing or Matching:* Under section 2212(f) of the ESEA, each grant recipient must provide from non-Federal sources an amount equal to 50 percent of the amount of the grant (which may be provided in cash or in kind), to carry out the activities supported by the grant. Applicants and grantees should budget relative to each annual award of TSL grant funds. Applicants are strongly encouraged to take this requirement into account when requesting Federal funds and limit their requests appropriately. Applicants should verify that their budgets reflect both the requested Federal award amount and the matching contribution with appropriate cost allocations. TSL: (Cost Share or Matching Formula: Total Project Cost multiplied by .67 equals Federal Award Amount).

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 2212(g) of the ESEA, funds made available under this program must be used to supplement, and not supplant, other Federal or State funds that would otherwise be expended to carry out activities under this program. The Secretary considers all schools funded by the Department of Interior's Bureau of Indian Education to be LEAs, and the funds that these schools receive from the Department of Interior's annual appropriation to be neither Federal nor State funds. Further, the prohibition against supplanting also means that grantees seeking to charge indirect costs to TSL funds will need to use their negotiated restricted indirect

cost rates. See 34 CFR 75.563 for more information.

c. *Indirect Cost Rate Information:* This program uses a restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants to directly carry out project activities described in its application to the following types of entities: LEAs, SEAs, nonprofit organizations or for-profit organizations. The grantee may award subgrants to entities it has identified in an approved application.

4. *Renewal:* Under section 2212(b)(2) of the ESEA, the Secretary may renew a grant awarded under this section for up to 2 additional years if the grantee demonstrates to the Secretary that the grantee is effectively using funds. Such renewal may include allowing the grantee to scale up or replicate the successful program.

Note: During the third year of the project period for grants awarded under this competition, if the Department exercises the option to offer an opportunity for renewals, the Department will provide grantees with information on the renewal process. This additional funding is intended not only to support continuation of approved project activities, but also to encourage scaling, replication, and sustainability efforts and strategies. In making decisions on whether to award a 2-year renewal award, we intend to review performance data submitted in regularly required reporting, as well as potentially request narrative information to be assessed using selection criteria from 34 CFR 75.210.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for TSL, an application may include business information that the applicant considers proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom Act (5 U.S.C. 552, as amended). Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information. Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Calibri, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants who intend to apply. Therefore, we strongly encourage each potential applicant to notify us of the applicant's intent to submit an application. To do so, please email *TSL@ed.gov* with the subject line ''Intent to Apply,'' and include the applicant's name and contact person's name and email address by July 10, 2023. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 75.210. The maximum score for the following selection criteria is 100 points. The maximum score for each criterion is included in parentheses following its title.

(a) *Need for project* (20 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining evidence of the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice) using existing funding streams from other programs or policies supported by community, State, and Federal resources.

(iii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(iv) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs

of the target population or other identified needs.

(b) *Quality of the project design* (25 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale (as defined in this notice).

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(c) *Quality of the management plan* (25 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(d) *Adequacy of resources* (30 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The likelihood that the proposed project will result in system change or improvement.

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(iii) The extent to which the applicant demonstrates that it has the resources to operate the project beyond the length of the grant, including a multi-year financial and operating model and accompanying plan; the demonstrated commitment of any partners; evidence of broad support from stakeholders (*e.g.,* SEAs, teachers' unions) critical to the project's long-term success; or more than one of these types of evidence.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10 in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department

grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:*

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

Note: In addition, under 34 CFR 75.591, all TSL grantees must cooperate in any evaluation of the program conducted by the Department.

5. *Performance Measures:* The goal of TSL is to support educators, particularly those in high-need schools, to raise student academic achievement and close the achievement gap between high- and low-performing students. For the purposes of Department reporting under 34 CFR 75.110, we have established a set of performance measures: (a) the percentage of teachers and school leaders within the TSL-assisted schools rated effective or higher by their districts' evaluation and support systems; (b) the percentage of teachers and school leaders across the participating district(s) that show improvements, over the previous year, on the student growth component of their evaluation rating; (c) the percentage of teachers and school leaders within the TSL-assisted schools that show improvements, over the previous year, on the student growth component of their evaluation rating; (d) the percentage of teachers and school leaders in TSL-assisted schools for whom evaluation ratings were used to inform decisions regarding recruitment, hiring, placement, retention, dismissal, professional development, tenure, promotion, or all of the above; (e) the percentage of teachers and school leaders within the participating district(s) who earned performance-based compensation based on their individual evaluation ratings; (f) the percentage of teachers and school leaders in TSL-funded schools who earned performance-based compensation based on their individual evaluation ratings; (g) the number of teachers receiving performance compensation disaggregated by race, gender, and where available, disability status; (h) the number of school leaders receiving performance compensation disaggregated by race, gender, and where available, disability status; and (i) the number of teachers receiving performance compensation for leadership responsibilities disaggregated by race, gender, and where available, disability status.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023–11083 Filed 5–23–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Trespassing on DOE Property: Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of designation of Savannah River Site trespass boundaries.

SUMMARY: The Department of Energy (DOE) prohibits unauthorized entry and the unauthorized introduction of weapons or dangerous materials into and upon its nuclear sites. The Savannah River Site (SRS), a defense nuclear site comprising approximately 310 square miles of DOE-owned property in Aiken, Allendale and Barnwell Counties, South Carolina, is required to periodically survey and update its boundaries and publish those results in the **Federal Register**. The purpose of this notice is to provide the public with the most recent amendments to the SRS trespass boundary since its last publication in

the **Federal Register**, and to add descriptions of publicly accessible land parcels and rights-of-way on DOE-owned property at the SRS.

DATES: This action is effective on May 18, 2023.

FOR FURTHER INFORMATION CONTACT:
Scott Boeke, U.S. Department of Energy, Savannah River Operations Office, ATTN: Office of Security, Safeguards & Emergency Services, P.O. Box A, Aiken, SC 29802, Email: *scott.boeke@srs.gov*, Telephone: 803–952–7385
Lucy Knowles, Chief Counsel, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, Email: *lucy.knowles@srs.gov*, Telephone: 803–952–7618

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), successor agency to the Atomic Energy Commission, is authorized pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 as implemented by the Department of Energy Organization Act, to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into and upon its nuclear sites. By Notice dated October 12, 1965, appearing in the **Federal Register** of October 19, 1965, the Atomic Energy Commission prohibited unauthorized entry into and upon certain portions of the Savannah River Site (SRS) located in the State of South Carolina. This Notice was amended in 1968 (dated January 31, 1968); in 1975 (dated December 4, 1975); in 1982 (dated September 1, 1982); and in 1985 (dated August 5, 1985). This Notice further amends the site description in the previous notices to include the entire Savannah River Site. Notices stating the pertinent prohibition of Title 10, Part 860—*Trespassing On Department Of Energy Property,* Section 5, *Violations and penalties,* will be posted at all entrances of said tracts and at intervals along its perimeters as provided in Title 10, Part 860—*Trespassing On Department Of Energy Property,* Section 5, *Posting.* It should be noted that information contained in this notice is from the report, *Savannah River Site, SC; Trespassing on Department of Energy Property,* approved on December 8, 2022, by R. T. Bartholomew, Director, Office of Safeguards, Security and Emergency Services, Savannah River Operations Office, U.S. Department of Energy.

The site description of the Savannah River Site is amended to read as follows:

All that tract of parcel of land lying or being situated in Aiken, Allendale and Barnwell Counties, in the State of South Carolina, approximately 14 miles southeast of the city of Augusta, State of Georgia, and 12 miles south of the town of Aiken, State of South Carolina; bounded on the southwest and south by the Savannah River, on the east by lands of Florence L.S. Clark (Creek Plantation), on the north by lands of Catawba Timber Company, on the northwest by Aiken County Road 62, lands now or formerly of W.H. Harper, Fitch Gilbert, J.L. Pew, Mack Foreman, J.L. Steed et al. and being more particularly described as follows:

Bearings on the following descriptions are referred to the Savannah River Site (SRS) coordinate system, unless otherwise specifically noted.

Beginning at SRS monument number 1 near the Savannah River; thence N 70–26–17 E 3,224.13 feet to SRS monument number 1A; thence N 70–26–16 E 523.01 feet to SRS monument 1B; thence N 70–26–17 E 1,311.11 feet to SRS monument 2; thence S 23–09–34 E 647.94 feet to SRS monument 3; thence N 71–10–56 E 1,406.53 feet to SRS monument 4; thence S 81–23–22 E 3,449.13 feet to SRS monument 4A; thence N 75–11–56 E 654.15 feet to SRS monument 4B; thence S 85–04–12 E 10,141.28 feet to SRS monument 4D; thence S 84–26–58 E 199.75 feet to SRS monument 5; thence N 00–05–36 W 3,322.84 feet to SRS monument 6; thence N 21–52–47 E 455.4 feet to SRS monument 6A (said point having a coordinate value on the SRS coordinate system of N 94773.45 and E 25269.90); thence N 75–34–22 E 1,613.12 feet to SRS monument 7; thence N 78–33–33 E 1,854.48 feet to SRS monument 8; thence N 14–06–35 W 2,513.83 feet to SRS monument 9; thence N 73–37–31 E 3,390.15 feet to SRS monument 10; thence N 2–31–25 W 622.97 feet to SRS monument 11; thence S 73–05–51 E 458.29 feet to SRS monument 12; thence N 01–09–44 E 3,670.11 feet to SRS monument 13; thence N 49–31–11 W 370.31 feet to SRS monument 14; thence N 53–11–53 E 1,808.93 feet to SRS monument 15; thence N 38–19–45 W 220.37 feet to SRS monument 16; thence N 66–53–39 E 967.38 feet to SRS monument 17; thence N 56–51–28 E 263.16 feet to monument 18; thence S 62–49–32 E 188.61 feet to SRS monument 19; thence N 55–16–41 E 197.30 feet to SRS monument 20; thence N 61–45–25 W 202.55 feet to SRS monument 21; thence N 56–13–08 E 1,026.18 feet to SRS monument 22; thence N 27–14–26 E 1,129.31 feet to SRS monument 23; thence S 60–12–34 E 281.93 feet to SRS monument 23A; thence S 60–14–48 E 112.84 feet to SRS monument 23B; thence S 60–13–56 E 1,684.91 feet to SRS monument 24A; thence S 60–13–48 E 69.95 feet to SRS monument 24; thence along the meander of the centerline of SC HWY 125, approximately 2,600 feet to SRS monument 25 (said point having a coordinate value on the SRS coordinate system of N 108,319.92 E 37,340.99); thence along the meander of the southeast R/W of S.C. Highway 62 approximately 10,900 feet to monument 26 (said point having a coordinate value on the SRS coordinate system of N 111,445.21 E 47.594.33); thence N 68–22–44 E 286.97 feet to SRS monument 27; thence S 26–42–44 E 2,086.29 feet to SRS monument 28; thence S 88–45–19 E 1,784.15 feet to SRS monument 29; thence N 50–47–33 E 615.22 feet to SRS monument 30; thence S 16–34–58 E 675.58 feet to monument 31; thence S 20–34–23 E 587.56 feet to SRS monument 32; thence N 59–53–06 E 653.65 feet to SRS monument 33; thence N 67–08–57 E 2,733.25 feet to SRS monument 34; thence N65–56–48 E 618.93 feet to SRS monument 35; thence N 62–13–09 E 2,675.95 feet to SRS monument 36; thence S 01–28–07 W 1,284.83 feet to SRS monument 37; thence N 29–10–00 E 1,791.29 feet to SRS monument 38; thence S 58–47–43 E 3,228.36 feet to SRS monument 39; thence N 58–02–11 E 542.97 feet to SRS monument 40; thence N 40–38–25 E 1,281.41 feet to SRS monument 41; thence along the meander of Woods Road approximately 1,500 feet in a southeasterly direction to SRS monument 42 (said point having a coordinate value on the SRS coordinate system of N 110,691.93 E 63,516.56); thence N 89–27–05 E 2,723.36 feet to SRS monument 43; thence N 72–50–13 E 1,346.17 feet to SRS monument 44; thence S 26–04–56 E 886.05 feet to SRS monument 45; thence N 68–56–56 E 1,111.14 feet to SRS monument 46; thence S 45–16–35 E 849.05 feet to SRS monument 47; thence N 51–41–24 E 2,116.00 feet to SRS monument 48; thence S 04–58–33 E 977.92 feet to SRS monument 49; thence S 76–21–44 E 1,925.20 feet to SRS monument 50; thence N 47–36–31 E 890.43 feet to SRS monument 51; thence S 37–02–27 E 716.77 feet to SRS monument 52; thence N 29–55–50 E 226.47 feet to SRS monument 53; thence S 36–22–09 E 683.22 feet to SRS monument 54; thence N 63–52–19 E 325.38 feet to SRS monument 55 (pt. in centerline of unnamed dirt road); thence S 38–07–02 E 3,400.36 feet to SRS monument 56 (pt. in centerline of unnamed dirt road); thence N 65–17–41 E 2,780.78 feet to SRS monument 57; thence N 64–37–23

E 1,066.57 feet to SRS monument 58; thence S 55–33–02 E 2,275.19 feet to SRS monument 59 (said point having a coordinate value on the SRS coordinate system of N 107479.34 and E 82536.62); thence N 88–34–20 E 617.70 feet to SRS monument 60; thence S 10–09–12 E 208.98 feet to SRS monument 61; thence N 86–15–12 E 209.04 feet to SRS monument 62; thence S 07–22–26 E 1,464.98 feet to SRS monument 63; thence N 73–32–25 E 2,282.88 feet to SRS monument 64; thence S 57–40–05 E 12,119.62 feet to SRS monument 64A; thence S 57–39–26 E 533.46 feet to SRS monument 65R; thence along meander of Upper Three Runs Creek to approximately 1,900 feet to SRS monument 66R (said point having a coordinate value on the SRS coordinate system of N 98466.86 E 95129.86); thence S 56–59–18 E 2,932.51 feet to SRS monument 67; thence S 40–36–11 E 3,491.43 feet to SRS monument 68; thence S 60–56–51 E 3,293.85 feet to SRS monument 69 (said point having a coordinate value on the SRS coordinate system of N 92618.85 and E 102740.62); thence S 84–49–32 E 2,585.35 feet to SRS monument 70; thence S 38–04–09 E 341.98 feet to SRS monument 71; thence N 63–30–22 E 806.05 feet to SRS monument 72; thence S 39–38–55 E 781.61 feet to SRS monument 73; thence S 11–29–50 W 849.68 feet to SRS monument 74; thence S 71–55–15 E 2,931.66 feet to SRS monument 75; thence S 20–58–49 W 2,234.56 feet to SRS monument 76; thence along a meander of unnamed dirt road (Forestry Road 25–20), approximately 2,500 feet to SRS monument 77 (said point having a coordinate value on the SRS coordinate system of N 87,253.73 E 110,850.77); thence S 21–02–45 W 584.61 feet to SRS monument 78; thence S 30–23–20 E 455.48 feet to SRS monument 79; thence S 13–19–50 E 3,229.98 feet to SRS monument 80; thence S 67–13–54 E 2,567.60 feet to SRS monument 81; thence S 54–47–07 W 137.17 feet to SRS monument 82; thence S 08–23–04 W 2,466.24 feet to SRS monument 83; thence S 80–06–27 E 213.21 feet to SRS monument 84; thence S 21–20–49 W 1,136.02 feet to SRS monument 85; thence S 21–12–29 E 5,044.03 feet to SRS monument 86; thence S 50–39–07 E 2,616.41 feet to SRS monument 87; thence S 26–24–40 W 527.89 feet to SRS monument 88; thence S 86–21–48 W 254.45 feet to SRS monument 88A; thence S 51–16–45 W 271.79 feet to SRS monument 88B; thence S 77–14–44 W 320.38 feet to SRS monument 88C; thence 87–21–46 W 99.10 feet to SRS monument 88D; thence N 76–07–48 W 208.95 feet to SRS monument 88E; thence N 85–35–51 W 253.51 feet to SRS monument 89; thence S 08–18–26 E 1,464.01 feet to SRS monument 89A; thence N 86–39–06 E 412.10 feet to SRS monument 90; thence S 42–20–27 W 1,316.23 feet to SRS monument 91; thence S 39–52–06 W 598.85 feet to SRS monument 92; thence S 13–01–46 E 1,416.18 feet to SRS monument 93; thence S 52–57–32 E 679.76 feet to SRS monument 94; thence S 08–56–17 E 1,298.14 feet to SRS monument 95; thence S 31–35–49 W 605.47 feet to SRS monument 96; thence S 11–09–05 E 1,359.04 feet to SRS monument 97; thence S 85–54–30 W 1,378.47 feet to SRS monument 98; thence S 70–00–27 W 221.18 feet to SRS monument 99; thence S 18–50–23 E 422.48 feet to SRS monument 100; thence S 09–30–55 W 974.78 feet to SRS monument 101; thence S 10–14–30 E 2,517.38 feet to SRS monument 102; thence S 63–27–43 W 445.78 feet to SRS monument 103 (said point having a coordinate value on the SRS coordinate system of N 59549.52 and E 114391.37); thence S 21–31–35 E 3,749 feet to SRS monument 104; thence S 41–39–02 W 2,639.80 feet to SRS monument 105; thence S 58–26–38 W 1,514.08 feet to SRS monument to 106; thence S 08–19–11 W 1,621.02 feet to SRS monument 107; thence S 38–25–50 W 1,880.12 feet to SRS monument 108; thence N 52–34–05 W 517.13 feet to SRS monument 109; thence S 39–52–13 W 690.43 feet to SRS monument 110; thence S 28–08–31 W 3,516.05 feet to SRS monument 111; thence S 30–34–26 W 205.98 feet to SRS monument 112; thence N 86–01–10 W 1,203.84 feet to SRS monument 113; thence S 24–21–01 W 657.46 feet to SRS monument 113A; thence S 25–12–17 W 1,858.36 feet to SRS monument 114; thence S 15–27–52 W 3,141.21 feet to SRS monument 115; thence N 60–32–44 W 853.31 feet to SRS monument 116; thence N 55–51–05 W 4,429.13 feet to SRS monument 330; thence S 38–20–42 W 7,043.25 feet to SRS monument 331; thence S 67–36–57 W 1,897.98 feet to SRS monument 332; thence S 66–13–49 W 2,627.19 feet to SRS monument 333; thence S 68–08–43 W 2,342.21 feet to SRS monument 334; thence S 50–51–24 W 2,230.28 feet to SRS monument 335; thence S 37–17–35 W 736.29 feet to SRS monument 336; thence S 21–03–47 W 1,096.98 feet to SRS monument 337; thence S 46–36–58 W 575.70 feet to SRS monument 338; thence S 31–26–41 W 775.94 feet to SRS monument 339 (said point having a coordinate value on the SRS coordinate system of N 32156.31 and E 87097.32); thence S 70–25–20 E 3,501.08 feet to SRS monument 340; thence S 53–33–00 E 3,756.02 feet to SRS monument 341; thence N 53–25–22 E 237.76 feet to SRS monument 342; thence S 20–23–24 E 465.57 feet to SRS monument 343; thence S 37–02–48 E 255.22 feet to SRS monument 344; thence S 53–33–24 E 721.95 feet to SRS monument 345; thence S 58–53–21 W 2,212.02 feet to SRS monument 130; thence S 61–23–47 W 1,032.93 feet to SRS monument 131, thence S 45–14–50 W 1,235.33 feet to SRS monument 132; thence S 44–09–49 W 1,009.13 feet to SRS monument 133; thence S 48–27–54 W 1,965.45 feet to SRS monument 134; thence S 34–43–15 E 1,843.69 feet to SRS monument 135; thence S 57–54–16 W 852.48 feet to SRS monument 136; thence N 71–47–52 W 1,733.99 feet to SRS monument 137; thence S 24–47–28 W 2,997.17 feet to SRS monument 138; thence N 77–38–33 W 532.97 feet to SRS monument 139; thence S 13–55–11 W 2,565.43 feet to SRS monument 140; thence N 78–16–06 W 2,097.45 feet to SRS monument 141; thence S 44–49–35 W 1,442.07 feet to SRS monument 142; thence S 15–50–02 W 1,140.11 feet to SRS monument 143; thence S 32–24–38 W 824.92 feet to SRS monument 144; thence S 50–39–30 W 1,014.57 feet to SRS monument 145; thence S 02–06–16 W 959.34 feet to SRS monument 146; thence S 73–57–04 W 530.42 feet to SRS monument 147; thence S 16–18–49 W 2,819.68 feet to SRS monument 148; thence S 10–59–53 W 741.98 feet to SRS monument 149; thence S 07–12–35 E 956.4 feet to SRS monument 150; thence S 02–50–50 E 436.45 feet to SRS monument 150A; thence S 02–40–26 W 261.95 feet to SRS monument 151; thence S 34–44–29 E 280.83 feet to SRS monument 151A; thence S 24–14–49 E 420.92 feet to SRS monument 151B; thence S 00–25–52 E 228.6 feet to SRS monument 151C; thence S 06–07–01 W 74.51 feet to SRS monument 151D; S 25–30–19 E 166.61 feet to SRS monument 151E; thence S 19–28–12 E 265.94 feet to SRS monument 151F; thence S 84–38–08 E 210.18 feet to SRS monument 151G; thence S 00–23–35 W 365.93 feet to SRS monument 151H; thence S 04–39–24 E 298.83 feet to SRS monument 151I; S 20–26–18 E 232.1 feet to SRS monument 152; thence N 67–23–08 E 24.34 feet to SRS monument 152A; thence N 78–00–45 E 253.11 feet to SRS monument 152B; thence N 80–46–41 E 371.52 feet to SRS monument 153; thence N 07–24–19 E 37.01 feet to SRS monument 153A; thence N 68–10–55 E 230.75 feet to SRS monument 153B; thence N 51–56–49 E 577.61 feet to SRS monument 153C; thence N 52–07–26 E 416.85 feet to SRS monument 153D; thence N 41–29–10 E 213.54 feet to SRS monument 153E; thence N 55–

03–53 E 101.07 feet to SRS monument 153F; thence N 78–41–21 E 235.05 feet to SRS monument 153G; thence N 62–01–13 E 190.77 feet to SRS monument 154; thence N 19–09–10 E 131.24 feet to SRS monument 154A; thence N 30–08–52 W 276.52 feet to SRS monument 154B; thence N 59–30–54 W 100.16 feet to SRS monument 154C; thence N 08–25–07 W 381.34 feet to SRS monument 154D; thence N 27–12–10 E 235.03 feet to SRS monument 154E; S 58–10–54 E 131.88 feet to SRS monument 154F; thence S 11–34–12 E 608.58 feet to SRS monument 154G; thence S 24–45–32 E 398.48 feet to SRS monument 154H; thence N 84–25–48 E 107.51 feet to SRS monument 154I; thence N 03–26–28 E 426.85 feet to SRS monument 154J; thence N 20–23–23 W 455.68 feet to SRS monument 154K; thence N 83–54–07 E 126.8 feet to SRS monument 154L; thence N 49–37–08 E 169.65 feet to SRS monument 154M; thence S 19–14–54 E 297.88 feet to SRS monument 154N; thence N 47–24–51 E 75.04 feet to SRS monument 154O; thence N 11–01–05 W 295.16 feet to SRS monument 154P; thence N 80–55–08 E 268.32 feet to SRS monument 154Q; thence S 26–53–59 E 188.29 feet to SRS monument 154R; thence S 18–09–11 E 375.47 feet to SRS monument 154S; thence S 23–09–41 E 672.27 feet to SRS monument 154T; thence along the meander of Gantts Mill Creek in a westerly direction approximately 1,200 feet to SRS monument 155 (said point having a coordinate value on the SRS coordinate system of N 6216.69 E 82230.55); thence S 00–58–57 W 242.02 feet to SRS monument 156; thence S 76–22–06 W 369.83 feet to SRS monument 157; thence S 54–17–13 W 291.25 feet to SRS monument 158; thence S 69–02–15 W 309.57 feet to SRS monument 159; thence S 62–17–42 W 299.90 feet to SRS monument 160; thence S 19–27–54 W 318.04 feet to SRS monument 161; thence S 57–15–28 W 661.37 feet to SRS monument 162; thence S 44–03–57 W 848.9 feet to SRS monument 163; thence S 27–04–03 W 612.01 feet to SRS monument 164; thence S 67–56–29 W 294.55 feet to SRS monument 165; thence S 39–20–20 W 602.77 feet to SRS monument 166; thence S 11–10–05 W 266.35 feet to SRS monument 167; thence S 25–35–41 W 557.96 feet to SRS monument 168; thence S 29–14–37 E 713.68 feet to SRS monument 169; thence S 15–22–20 W 904.49 feet to SRS monument 170; thence S 48–52–24 E 1,139.61 feet to SRS monument 171; thence S 14–53–16 E 1,596.09 feet to SRS monument 172; thence N 61–22–11 W 1,111.81 feet to SRS monument 173; thence S 51–53–18 W 581.74 feet to SRS monument 174; thence S 20–21–37 W 2,971.23 feet to SRS monument 175; thence S 07–57–32 W 2,743.46 feet to SRS monument 176; thence S 56–18–29 E 845.39 feet to SRS monument 177; thence S 84–36–33 W 668.86 feet to SRS monument 178; thence S 27–14–02 W 1,414.26 feet to SRS monument 179; thence S 08–33–54 W 973.47 feet to SRS monument 180; thence S 31–23–48 W 1,032.34 feet to SRS monument 181; thence S 55–19–41 W 1,625.43 feet to SRS monument 182; thence S 17–52–48 W 2,390.67 feet to SRS monument 183; thence S 34–01–52 W 971.34 feet to SRS monument 184; thence S 26–08–46 E 829.87 feet to SRS monument 185; thence S 67–00–22 W 1,151 feet to SRS monument 186; thence S 09–13–11 W 551.61 feet to SRS monument 187; thence S 39–07–20 W 2,023.58 feet to SRS monument 188; thence S 28–06–53 W 2,249.03 feet to SRS monument 189; thence S 63–03–44 W 1,351.22 feet to SRS monument 190; thence S 32–32–13 E 293.02 feet to SRS monument 191; thence S 32–52–13 W 539.67 feet to SRS monument 192; thence S 46–38–37 W 113.64 feet to SRS monument 193; thence S 30–19–03 W 891.36 feet to SRS monument 194; thence S 13–42–43 W 590.79 feet to SRS monument 195; thence S 56–04–53 W 727.73 feet to SRS monument 196; thence N 86–34–46 W 297.99 feet to SRS monument 197; thence S 52–50–07 W 594.88 feet to SRS monument 198; thence S 77–19–06 E 262.42 feet to SRS monument 199; thence S 62–53–35 E 1,023.49 feet to SRS monument 200; thence S 84–18–58 E 528.57 feet to SRS monument 201; thence N 76–01–26 E 528.5 feet to SRS monument 202; thence N 84–50–07 E 363.14 feet to SRS monument 203; thence S 55–49–37 E 534.54 feet to SRS monument 204; thence S 79–41–52 W 461.25 feet to SRS monument 205; thence N 65–47–07 W 271.65 feet to SRS monument 206; thence S 65–28–34 W 346.04 feet to SRS monument 207; thence S 28–55–54 E 954.53 feet to SRS monument 208; thence S 05–55–53 E 197.70 feet to SRS monument 209; thence S 44–03–48 E 324.02 feet to SRS monument 210; thence S 41–55–23 E 1,397.43 feet to SRS monument 210A; thence N 82–34–00 W 1,976.66 feet to SRS monument 210B; thence N 01–07–55 E 485.50 feet to SRS monument 210C; thence N 61–16–58 W 990.83 feet to SRS monument 210D; thence N 27–49–58 W 731.54 feet to SRS monument 211; thence S 81–24–16 E 389.94 feet to SRS monument 211A; thence N 18–00–14 E 50.02 feet to SRS monument 211B; thence N 17–58–36 E 100.05 feet to SRS monument 211C; thence N 17–54–06 E 49.94 feet to SRS monument 211D; thence N 81–12–55 W 437.46 feet to SRS monument 212; thence N 86–07–12 W 6,934 feet to SRS monument 213; thence N 81–49–46 W 401.41 feet to SRS monument 214; thence N 71–53–25 W 241.25 feet to SRS monument 215; thence N 62–48–18 W 3,190.02 feet to SRS monument 216; thence N 62–47–19 W 130.45 feet to SRS monument 216A; thence N 00–02–59 E 287.75 feet to SRS monument 216B; thence N 08–08–21 E 249.47 feet to SRS monument 216C; thence N 12–08–04 E 702.45 feet to SRS monument 216D; thence S 32–23–56 W 463.52 feet to SRS monument 217; thence S 24–34–28 W 489.38 feet to SRS monument 218B; thence N 52–40–13 W 33.64 feet to SRS monument 218; thence N 52–30–22 W 234.16 feet to SRS monument 219; thence S 28–35–24 W 266.41 feet to SRS monument 220; thence S 68–50–45 W 266.96 feet to SRS monument 221; thence S 67–30–59 W 366.82 feet to SRS monument 222; thence N 47–15–04 W 1,801.64 feet to SRS monument 223; thence S 86–55–41 W 2,405.01 feet to SRS monument 224; thence S 65–34–57 W 2,074.27 feet to SRS monument 225; thence N 62–43–34 W 736.03 feet to SRS monument 226; thence S 57–45–59 W 5,160.30 feet to SRS monument 227; thence S 63–47–24 W 2,519.95 feet to SRS monument 228; thence S 10–22–02 W 4,936.45 feet to SRS monument 229; thence S 42–37–15 E 1,453.45 feet to SRS monument 230; thence S 08–13–23 W 490.96 feet to SRS monument 231; thence N 72–31–44 W 1,560.74 feet to SRS monument 232; thence N 72–47–25 W 1,375.97 feet to SRS monument 233; thence N 72–24–10 W 279.46 feet to SRS monument 234; thence N 72–27–48 W 1,904.63 feet to SRS monument 235; thence along the meander of the Savannah River in a northerly direction 12,500.00 feet to SRS monument 236 (said point having a coordinate value on the SRS coordinate system of S 23141.48 E 36520.97); thence N 84–20–23 E 3,975.48 feet to SRS monument 237; thence N 35–38–46 E 1,688.18 feet to SRS monument 238; thence S 79–27–51 E 2,199.29 feet to SRS monument 239; thence N 68–26–37 E 2,146.70 feet to SRS monument 240; thence N 24–46–05 W 2,751.85 feet to SRS monument 241; thence N 46–02–39 E 289.88 feet to SRS monument 242; thence S 51–48–01 E 2,434.12 feet to SRS monument 243; thence N 60–21–42 E 2,775.41 feet to SRS monument 244; thence N 80–56–18 E 1,933.5 feet to SRS monument 245; thence N 33–55–02 E 643.95 feet to SRS monument 246; thence S 84–37–57 E 837.59 feet to SRS monument 247; thence S 85–30–37 E 1,597.70 feet to SRS monument 247A; thence S 22–12–

30 E 21.96 feet to SRS monument 248; thence S 22–12–40 E 725.91 feet to SRS monument 249; thence N 89–20–33 E 1,095.20 feet to SRS monument 250; thence S 42–56–33 E 1,347.43 feet to SRS monument 251; thence S 55–11–45 E 1,232.68 feet to SRS monument 252; thence S 30–38–05 E 160.06 feet to SRS monument 253; thence S 76–22–12 E 209.76 feet to SRS monument 254; thence S 54–02–54 E 1,844.05 feet to SRS monument 255; thence S 78–20–00 E 3,652.23 feet to SRS monument 256; thence N 54–29–43 E 1,010.80 feet to SRS monument 257; thence N 84–16–01 E 2,275.66 feet to SRS monument 258; thence N 50–02–00 E 1,766.08 feet to SRS monument 259; thence S 23–59–27 E 676.11 feet to SRS monument 260; thence N 54–58–04 E 1,080.09 feet to SRS monument 261; thence N 36–59–45 E 3,917.45 feet to SRS monument 262; thence N 01–17–49 E 864.57 feet to SRS monument 263; thence N 37–20–29 E 1,685.73 feet to SRS monument 264; thence N 19–16–01 W 589.69 feet to SRS monument 265; thence N 11–44–29 E 1,853.94 feet to SRS monument 266; thence N 27–24–00 W 1,039.29 feet to SRS monument 267; thence N 39–05–37 E 1,500.83 feet to SRS monument 268; thence N 56–33–13 E 2,138.92 feet to SRS monument 269; thence N 47–31–00 E 1,590.64 feet to SRS monument 270; thence N 14–09–46 E 1,213.76 feet to SRS monument 270A; thence N 14–08–33 E 54.92 feet to SRS monument 271; thence N 45–35–15 W 60.00 feet to SRS monument 271A; thence N 45–35–33 W 441.05 feet to SRS monument 272; thence N 76–39–41 E 775.37 feet to SRS monument 273; thence N 45–29–47 W 1,088.55 feet to SRS monument 274; thence N 34–29–13 E 3,677.28 feet to SRS monument 275; thence N 70–05–02 W 1,900.34 feet to SRS monument 276; thence N 26–47–01 E 3,315.18 feet to SRS monument 277; thence N 80–47–00 W 720.24 feet to SRS monument 278; thence N 07–32–46 E 2,528.40 feet to SRS monument 279; thence N 73–40–30 E 1,530.33 feet to SRS monument 279A; thence N 15–43–51 E 1,380.39 feet to SRS monument 280; thence N 71–11–25 W 777.45 feet to SRS monument 281; thence S 71–15–35 W 1,043.45 feet to SRS monument 282; thence N 19–40–39 W 270.10 feet to SRS monument 283; thence N 74–51–36 E 630.26 feet to SRS monument 284; thence N 10–22–41 E 1,730.50 feet to SRS monument 285; thence N 52–08–48 W 1,285.80 feet to SRS monument 286; thence N 32–53–14 E 2,084.25 feet to SRS monument 287; thence N 20–25–36 W 661.25 feet to SRS monument 288; thence N 64–03–21 W 650.11 feet to SRS monument 289; thence S 51–26–24 W 470.04 feet to SRS monument 290; thence N 70–03–30 W 375.12 feet to SRS monument 290A; thence N 58–31–13 W 208.18 feet to SRS monument 290B; thence N 52–06–56 W 204.02 feet to SRS monument 290C; thence N 60–51–28 W 207.87 feet to SRS monument 290D; thence N 45–28–03 W 330.19 feet to SRS monument 290E; thence N 55–06–30 W 804.17 feet to SRS monument 290F; thence N 40–55–48 W 934.02 feet to SRS monument 290G; thence N 42–36–21 W 216.34 feet to SRS monument 291; thence N 42–42–30 W 2,497.80 feet to SRS monument 292; thence S 32–35–39 W 1,446.72 feet to SRS monument 293; thence N 49–28–27 W 1,336.97 feet to SRS monument 294; thence S 30–07–03 W 2,479.84 feet to SRS monument 295; thence N 58–31–06 W 1,776.11 feet to SRS monument 296; thence S 52–19–44 W 848.32 feet to SRS monument 297; thence S 45–00–56 W 1,089.09 feet to SRS monument 298; thence N 79–30–46 W 3,022.06 feet to SRS monument 299; thence S 23–44–12 W 944.35 feet to SRS monument 300; thence N 60–50–36 W 1,664.02 feet to SRS monument 301; thence S 37–28–12 W 139.27 feet to SRS monument 302; thence N 64–16–53 W 1,870.03 feet to SRS monument 303; thence S 24–37–42 W 1,213.5 feet to SRS monument 304; thence N 63–42–22 W 1,337.68 feet to SRS monument 305; thence N 79–13–15 W 5,120.73 feet to SRS monument 306; thence S 24–30–33 W 1,573.96 feet to SRS monument 307; thence N 53–08–44 W 6,650.51 feet to SRS monument 308; thence N 73–08–43 W 2,614.12 feet to SRS monument 309; thence along the meander of the centerline of Boggy Gut Creek S 29–42–27 W 1,477.04 feet to SRS monument 310; thence along the meander of the centerline of Boggy Gut Creek S 62–29–19 E 1,340.93 feet to SRS monument 311; thence S 68–59–42 W 2,165.27 feet to SRS monument 312; thence N 10–09–35 W 1,415.01 feet to SRS monument 313; thence along the meander of the centerline of Boggy Gut Creek S 77–24–58 W 3,447.02 feet to SRS monument 314; thence N 03–22–45 W 154.90 feet to SRS monument 315; thence N 15–29–46 W 262.00 feet to SRS monument 316; thence N 11–54–34 W 379.24 feet to SRS monument 317; thence S 78–26–39 W 356.75 feet to SRS monument 318; thence S 78–14–30 W 295.53 feet to SRS monument 319; thence N 30–13–34 W 391.83 feet to SRS monument 320; thence N 39–41–19 W 4,174.28 feet to SRS monument 321; thence S 42–41–41 W 3,048.55 feet to SRS monument 322; thence N 68–00–20 W 1,003.82 feet to SRS monument 323; thence S 41–13–45 W 407.26 feet to SRS monument 324; thence S 35–23–35 W 6,892.76 feet to SRS monument 325; thence follow along the meanders of the Savannah River 108,600 feet to SRS monument 1, the point of beginning.

Excluded from the above-described tract are the following rights-of-way and other parcels which are publicly accessible:

Seaboard Coast Line Railroad (CSX Railroad) (Formerly Charleston and Western Carolina Railroad)

Beginning at the SRS boundary line near the Augusta Barricade; thence in a southerly direction through the former town of Ellenton, continuing in a southeasterly direction through Robbins Station to the SRS boundary line a distance of 14.2 miles and containing 173 acres more or less.

Seaboard Coast Line Railroad (CSX Railroad)

Beginning at Robbins Station, thence in an easterly and northeasterly direction (crossing SRS Road A) to Meyers Mill siding, thence in a northeasterly direction to the intersection of the railroad and the Savannah River Site boundary line between monument 130 and 345.

United States Highway 278

Beginning at the intersection of the Savannah River Site boundary line and the centerline of US Hwy 278 between SRS monuments 54 and 55 east of the intersection of SC Hwy 19 and US Hwy 278; thence along the meanders of the centerline of US Hwy 278 in an easterly direction to the intersection of US Hwy 278 and SC 54; thence along the meanders of the centerline of US Hwy 278 in an easterly direction to the intersection of the Savannah River Site boundary line between Savannah River Site monuments 75 and 76.

United States Highway 278

Beginning at the intersection of the centerline of US Hwy 278 and the Savannah River Site boundary line between Savannah River Site monument 86 and 87; thence in a southeasterly direction along the meanders of the centerline of US Hwy 278 to the intersection of the centerline of said highway and the Savannah River Site boundary line between Savannah River Site monuments 88C and 88D.

(Brown Road) Aiken County

Beginning at a point of intersection of the southern right-of-way of Brown Road and the Savannah River Site Boundary line between SRS Monuments 13 and 14; thence along the meander of the southern right-of-way of Brown Road to a point of intersection between the southern right-of-way of Brown

Road and the Savannah River Site Boundary line between SRS Monuments 14 and 15; thence from a point of intersection between the southern right-of-way of Brown Road and the Savannah River Site Boundary line between SRS Monuments 15 and 16 along the meander of the southern right-of-way to a point of intersection at SRS Monument 17. Beginning again at SRS Monument 22; thence along the meander of the southern right-of-way of Brown Road to a point of intersection between the southern right-of-way of Brown Road and the Savannah Rr Site Boundary Line between SRS Monuments 23 and 23A.

S–2–5 (Main Street/Old Jackson Hwy) Aiken County

Beginning at the intersection of the centerline of Main St and the Savannah River Site Boundary line between Savannah River Site monuments 23A and 23B; thence along the meander of the centerline of Old Main Street in a southeasterly and southerly direction to a point of intersection with SC Hwy 125, south of SRS Monument 24.

SRS Road 1 (Aiken County)

Beginning at a point of intersection between the centerline of SC Hwy 125 and the centerline of SRS Road 1; thence along the meander of the centerline of SRS Road 1 in an easterly direction approximately 6.9 miles to a point of intersection between the centerline of SRS Road 1 and SRS Road 2.

SRS Road 1A (Aiken County)

Beginning at a point of intersection between the centerline of Green Pond Road and the centerline of SRS Road 1A; thence along the meander of the centerline of Road 1A in a northeasterly direction to a point of intersection between the centerline of Road 1A and SRS Road 1.

S–2–57 (Green Pond Road) Aiken County

Beginning at Savannah River Site monument 33 (a nail in the centerline of said road); thence along the meander of the centerline of Green Pond Road in a southeasterly direction to the intersection of the centerline of Green Pond Road and Savannah River Site Road 1 (intersection being northeast along SRS Road 1 of the 703 building).

Doe Court

Beginning at a point of intersection northeast of Savannah River Site monument 33 with the Savannah River Site boundary line, thence along the meander of the centerline of Doe Ct in a northeasterly direction approximately 2,300 feet to a point of deviation at which said road continues in a northeasterly direction away from the Savannah River Site boundary line.

C–2434 (Gateway Drive) Aiken County

Beginning at the centerline of Gateway Drive and the Savannah River Site Boundary line between Savannah River Site monuments 41 and 42; thence meandering along the centerline of Gateway Drive in a southerly direction to a point of intersection between the centerline of Gateway Drive and the centerline of SRS Road 1.

SRS Road 2 (Aiken County)

Beginning at a point of intersection between SRS Road 2 the Savannah River Site Boundary line between SRS monuments 53 and 54; thence along the meander of SRS Road 2 in a southwesterly direction, approximately 2,064 feet, to a point of intersection between the centerline of SRS Road 2 and the centerline of SRS Road 1.

S–2–738 (Washington Drive) Aiken County

Beginning at a point of intersection between the centerline of Washington Drive and the Savannah River Site Boundary Line between SRS Monuments 55 and 56; thence along the centerline of Washington Drive in a westerly direction, approximately 200 feet, to a point of intersection between the centerline of Washington Drive and the centerline of Hwy 278.

C–481 (Birch Street) Aiken County

Beginning at a point of intersection between the centerline of Washington Drive and the northern right-of-way of Birch Street; thence in a southeasterly direction, along the Savannah River Site Boundary Line between SRS Monuments 55 and 56, approximately 3,050 feet; thence turning southwest along a curve and continuing to a point of intersection between the intersection of the centerline of Birch Street and the centerline of Hwy 278.

C–1171 (Truman Street) Aiken County

Beginning at a point of intersection between the northern right of way of Birch Street and the centerline of Truman Street; thence along the meander of the centerline of Truman Street in a southwesterly direction to a point of intersection between the centerline of Truman Street and the centerline of Hwy 278.

C–485 (Adams Avenue) Aiken County

Beginning at a point of intersection between the northern right of way of Birch Street and the centerline of Adams Avenue; thence along the meander of the centerline of Adams Avenue in a southwesterly direction to a point of intersection between the centerline of Adams Avenue and the centerline of Hwy 278.

Fairfield Cemetery (Aiken County)

Beginning at a point of intersection between the centerline of Cemetery Road and Hwy 278; thence in a northeasterly direction to an approximate location of N 101626.85 E 82307.62 on the SRS coordinate system; thence in a northwesterly direction to an approximate location of N 102121.21 E 81983.18 on the SRS coordinate system; thence in a southwesterly direction to an approximate location of N 101949.77 E 81611.01 on the SRS coordinate system; thence in a southeasterly direction to an approximate location of N 101518.00 E 81863.40 on the SRS coordinate system; thence in a southeasterly direction to the return point of intersection between the centerline of Cemetery Road and Hwy 27.

C–498 (Boggy Gut Road) Aiken County

Beginning at a point of intersection between the centerline of Boggy Gut Road and the Savannah River Site Boundary Line between SRS Monuments 66R and 67; thence along the meander of the centerline of Boggy Gut Road in a southwesterly direction, approximately 1.3 miles, to a point of intersection between the centerline of Boggy Gut Road and the centerline of Hwy 278.

S–2–54 (Mt. Beulah Road) Aiken County

Beginning at a point of intersection between the centerline of Mt. Beulah Road and the Savannah River Site Boundary Line between SRS Monuments 75 and 76; thence along the meander of the centerline of Mt. Beulah Road in a southwesterly direction, approximately 2,100 feet, to a point of intersection between the centerline of Mt. Beulah Road and the centerline of Hwy 278.

C–507 (Dunlap Circle) Barnwell County

Beginning at a point of intersection between the western right of way of Dunlap Circle and the Savannah River Site Boundary Line between SRS Monuments 80 and 81; thence along the meander of the western right of way of Dunlap Circle approximately 507 feet in a southeasterly direction to a point of intersection between the western right of way Dunlap Circle and the Savannah River Site Boundary Line between SRS Monuments 82 and 83.

S—461 (Crimson Road) Barnwell County

Beginning at a point of intersection between SRS Monument 97 and the northern right of way of Crimson Road; thence along the meander of the northern right of way of Crimson Road in a westerly direction to SRS Monument 98.

S–6–856 (Tennessee Road) Barnwell County

Beginning at a point of intersection between the centerline of Tennessee Road and the Savannah River Site Boundary line near SRS Monument 291; thence along the meander of the northern right-of-way of Tennessee Road in a westerly direction to a point of intersection between the centerline of Tennessee Road and Aaron Price Road.

S–3–12 (Lemaster Lane) Barnwell County

Beginning at a point of intersection between Lemaster Lane and the northern right-of-way of Tennessee Road; thence along the meander of Lemaster Lane in a southwesterly direction to a point approximately 30 feet Northwest of SRS Monument 297.

Duncan Road (Barnwell County/ Allendale)

Beginning at a point of intersection between the western right-of-way of Duncan Road and the northern right-of-way of Tennessee Road; thence along the meander of the western right-of-way of Duncan Road in a southwesterly direction to a point of intersection between the western right-of-way of Duncan Road and the Savannah River Site Boundary line between SRS Monuments 301 and 302.

S–6–20 (Patterson Mill Road) Barnwell County/Allendale County

Beginning at the intersection of the centerline of Patterson Mill Road and the Savannah River Site Boundary line between Savannah River Site monuments 288 and 287; thence along the meander of the centerline of Patterson Mill Road in a northeasterly direction to a point of intersection between the centerline of Patterson Mill Road and the Savannah River Site Boundary line between SRS Monuments 148 and 147.

S–3–17 (Furse Mill Road) Allendale County

Beginning at the intersection of the centerline of Furse Mill Road and the Savannah River Site Boundary line between SRS monuments 272 and 273; thence along the meander of the centerline of Furse Mill Road in an easterly direction to a point of intersection between the centerline of Furse Mill Road and the centerline of Washington Badger/Boiling Springs Road.

S–3–65 (Washington Badger Road) Allendale County/S&6–39 (Boiling Springs Road) Barnwell County

Beginning at the intersection of the centerline of Washing Badger Road (Aiken County) and the Savannah River Site Boundary line between SRS monuments 271A and 270A; thence along the meander of the centerline of Washington Badger Road in a northeasterly direction, crossing over Stinson Bridge (603–23G) into Barnwell County and continuing as Boiling Springs Road in an easterly direction to a point of intersection between the centerline of Boiling Springs Road and the Savannah River Site Boundary line near SRS monument 176.

S–3–66 (Rocky Point Road) Allendale County

Beginning at the intersection of the centerline of Rocky Point Road and the Savannah River Site Boundary line northeast of SRS Monument 261; thence along the meander of the centerline of Rocky Point Road in a southeasterly direction to a point of intersection between the centerline of Rocky Point Road and the Savannah River Site Boundary line between SRS Monuments 190 and 191.

A–Area Badge Office Parking Lot

Beginning at a point along the southern right of way of SRS Road 1, an approximate location having a site coordinate of N 107192.5 E 49534.55 on the Savannah River Site coordinate system; thence along the meander of the southern right of way of SRS Road 1 in an easterly direction approximately 860 feet; thence south approximately 520 feet to the security fencing; thence along the meander of the security fencing in a westerly direction approximately 860 feet; thence north approximately 520 feet to the point of beginning.

Trailer Complex South of SRS Road 1

Beginning at a point of intersection with the southern right-of-way of SRS Road 1, an approximate location having a site coordinate of N 107351.88 E 51822.36; thence south approximately 35′ to a point of intersection with the metal fencing; thence along the meander of the outer metal fencing to an approximate location having a site coordinate of N 107243.71 E 51989.90; thence northwest approximately 153′ to an approximate location having a site coordinate of N 107393.64 E 51960.08.

Designated Demonstration Area

Being a triangular parcel located in the southeast corner of the intersection of SRS Road 1 and SC Hwy 125 described as follows: Beginning at the point of intersection of the southern right-of-way of SRS Road 1 (37.5 feet from the centerline of SRS Road 1) and the eastern right-of-way of SC Hwy 125 (75 feet from the centerline of the median of SC Highway 125); thence with the meanders of the eastern right-of-way of SC Hwy 125 S 2–09 W 1232.11 feet to a point; thence with the Federal Trespass Line fence N 46–40 E 1796.15 feet to a point on the southern right-of-way of SRS Road 1 S 89–56 W 1260.47 feet to the point of beginning, containing 17.81 acres more or less.

Crackerneck Wildlife Management Area

Beginning at SRS Monument 1 thence along the property line to SRS Monument 12. From SRS Monument 12 thence in a northern and easterly direction away from the Savannah River Site Boundary to a point of intersection (N 101219.34/E 37029.83) along the meander of SC Hwy 125. From this point of intersection thence along the meander of SC Hwy 125 to the intersection of Upper Three Runs Creek. From Upper Three Runs Creek thence along the meander of Upper Three Runs Creek to a point of intersection on the Savannah River; thence along the meander of the Savannah River north to SRS Monument 1.

Three Rivers Landfill

Beginning at a point of intersection between SC Hwy 125 and Dominion Energy 115–KV Right of Way thence moving in a southeasterly direction along the 115–KV Right of way to the intersection of Upper Three Runs Creek. From the intersection of Upper Three Runs Creek thence along the meander of Upper Three Runs Creek to the intersection with Dominion Energy 13.8–KV Right of Way. Traveling in a northernly direction along the 13.8–KV Dominion Energy Right of Way to the intersection with Miller Road thence west along Miller Rd to the Intersection of Dominion Energy 13.8–KV Right of Way and the southern Right of Way of SRS Road 2, thence in a southwesterly direction to beginning point along SC Hwy 125.

Signing Authority

This document of the Department of Energy was signed on May 18, 2023, by R.T. Bartholomew, Director, Office of Safeguards, Security and Emergency Services, Savannah River Operations Office, 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 19, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–11044 Filed 5–23–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23–51–000.
Applicants: Gulf Coast Express Pipeline LLC.
Description: § 284.123(g) Rate Filing: Addition of Hub Services and Fuel Revisions to be effective 5/1/2023.
Filed Date: 5/17/23.
Accession Number: 20230517–5099.
Comment Date: 5 p.m. ET 6/7/23.
Protest Date: 5 p.m. ET 7/17/23.

Docket Numbers: PR23–52–000.
Applicants: Columbia Gas of Maryland, Inc.
Description: § 284.123 Rate Filing: CMD SOC Change 1–1–23 to be effective 1/1/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5056.
Comment Date: 5 p.m. ET 6/1/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11034 Filed 5–23–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–64–000.
Applicants: Porterhouse Wind (4) LLC.
Description: Porterhouse Wind (4) LLC submits Supplement to Application for Authorization Under Section 203 of May 8, 2023.
Filed Date: 5/17/23.
Accession Number: 20230517–5224.
Comment Date: 5 p.m. ET 5/30/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–156–000.
Applicants: Harvest Gold Solar Power, LLC.
Description: Harvest Gold Solar Power, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/23.
Accession Number: 20230518–5052.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: EG23–157–000.
Applicants: SMT Alamo LLC.
Description: SMT Alamo LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date:. 5/18/23.
Accession Number: 20230518–5089.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: EG23–158–000.
Applicants: SMT Santa Rosa LLC.
Description: SMT Santa Rosa LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/23.
Accession Number: 20230518–5092.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: EG23–159–000.
Applicants: SMT Bay City LLC.
Description: SMT Bay City LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/23.
Accession Number: 20230518–5094.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: EG23–160–000.
Applicants: SMT Elsa LLC.
Description: SMT Elsa LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/23.
Accession Number: 20230518–5121.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: EG23–161–000.
Applicants: SMT Mercedes LLC.
Description: SMT Mercedes LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/18/23.
Accession Number: 20230518–5128.
Comment Date: 5 p.m. ET 6/8/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2004–004.
Applicants: Public Service Electric and Gas Company, PJM Interconnection, L.L.C.
Description: Compliance filing: Public Service Electric and Gas Company submits tariff filing per 35: PSEG Deficiency Response re Order 864 Compliance in ER20–2004 to be effective N/A.
Filed Date: 5/18/23.
Accession Number: 20230518–5091.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: ER22–1980–003.
Applicants: Deuel Harvest Wind Energy LLC.
Description: Compliance filing: Deuel Harvest Wind Reactive Service Tariff Compliance Filing to be effective 8/1/2022.
Filed Date: 5/18/23.
Accession Number: 20230518–5104.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: ER23–1907–000.
Applicants: Red Barn Energy, LLC.
Description: Tariff Amendment: Cancellation of MBR Tariff 05.17.23 to be effective 5/18/2023.
Filed Date: 5/17/23.
Accession Number: 20230517–5124.
Comment Date: 5 p.m. ET 6/7/23.

Docket Numbers: ER23–1908–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Attachment AA Clean-Up Filing to be effective 2/14/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5037.
Comment Date: 5 p.m. ET 6/8/23.

Docket Numbers: ER23–1909–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 3607;

Queue No. Y2–109 (amend) to be effective 7/18/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5038.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1910–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 6915; Queue No. AF2–039/AF2–088 to be effective 7/18/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5040.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1911–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6907; Queue No. AF2–154 to be effective 4/28/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5044.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1912–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 224, Amendment No. 3 to be effective 7/18/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5045.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1913–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6909; Queue No. AF2–156 to be effective 4/28/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5053.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1914–000.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment: Notice of Cancellation of Scnd Amnd LGIA SA 2535 among NYISO, Con Edison and NRG to be effective 7/18/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5054.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1915–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4062 Southwestern Power Admin/City of Poplar Bluff MOInt Agr to be effective 4/1/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5082.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1916–000.
Applicants: CPV Canton Mountain Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to Market-Based Rate Tariff to be effective 5/19/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5095.
Comment Date: 5 p.m. ET 6/8/23.
Docket Numbers: ER23–1917–000.
Applicants: CPV Saddleback Ridge Wind, LLC.
Description: § 205(d) Rate Filing: Notice of Succession to Market-Based Rate Tariff to be effective 5/19/2023.
Filed Date: 5/18/23.
Accession Number: 20230518–5108.
Comment Date: 5 p.m. ET 6/8/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11035 Filed 5–23–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–480–000]

East Tennessee Natural Gas, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on May 12, 2023, East Tennessee Natural Gas, LLC (East Tennessee) filed a prior notice request for authorization, in accordance with Sections 157.205 and 157.208, of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and East Tennessee's blanket certificate issued in Docket No. CP82–412–000,[1] to implement its Ridgetop to Dixon Springs Replacement Project, or Replacement Project. The Replacement Project will allow East Tennessee to reconfigure and replace a segment of 22-inch-diameter pipeline, including the installation of appurtenant facilities, in Sumner County, Tennessee between East Tennessee's Ridgetop and Dixon Springs Compressor Stations. East Tennessee states that the Replacement will have no impact on the certificated design capacity of its system, and that there will be no abandonment or permanent reduction in service to any customer of East Tennessee as a result of the Replacement Project. East Tennessee estimates the cost of the Replacement Project to be approximately $16 million, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

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 (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to: Estela D. Lozano, Director, Regulatory, East Tennessee Natural Gas, LLC, 915 North Eldridge Parkway, Suite 1100, Houston, Texas 77079, by telephone at (713) 627–4522 or by email at *estela.lozano@enbridge.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on July 17, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the

[1] *East Tennessee Natural Gas, LLC.,* 20 FERC ¶ 62,413 (1982).

NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is July 17, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is July 17, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before July 17, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–480–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–480–000.

To file via USPS:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Estela D. Lozano, Director, Regulatory, East Tennessee Natural Gas, LLC, 915 North Eldridge Parkway, Suite 1100, Houston, Texas 77079, or by email at *estela.lozano@enbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: May 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11033 Filed 5–23–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1897–000]

Digital Power USA, Inc.; 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 Digital Power USA, Inc.'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

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

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 June 7, 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 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–11032 Filed 5–23–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2021–0601; FRL–11002–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Underground Storage Tank Finder Application (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Underground Storage Tank Finder Application (EPA ICR Number 2696.01, OMB Control Number 2080–NEW), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on September 15, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before June 23, 2023.

ADDRESSES: Submit your comments to EPA, referencing Docket ID Number EPA–HQ–ORD–2021–0601, online using *https://www.regulations.gov/* (our preferred method), by email to *Docket_ORD@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Alexander Hall, Office of Research and Development, Center for Environmental Solutions and Emergency Response, Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone number: (513) 569–7374; email address: *hall.alexander@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a new ICR. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on September 15, 2022 during a 60-day comment period. Supporting documents that explain in detail the information that the EPA will collect are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The EPA recently developed the Underground Storage Tank (UST) Finder application (hereafter ''UST Finder''). UST Finder is a publicly available web map application containing a comprehensive, state-sourced national map of UST and leaking underground storage tank (LUST) data. UST Finder is available via EPA's GeoPlatform at *https://gispub.epa.gov/ustfinder.* UST Finder provides users access to information on the attributes and locations of active and closed USTs, UST facilities, and LUSTs in states in a geographic information system (GIS) environment. This information collection relates to information that state and territorial agencies already collect from UST and LUST owners and operators as part of their customary business practice to manage their compliance and enforcement programs. To successfully implement, maintain, and improve the data quality and usability of UST Finder, the Agency seeks to gather, on a voluntary basis, information from state and territorial agencies that oversee UST/LUST programs. Specifically, EPA will request that these agencies provide location and other relevant data about USTs and LUSTs that is already being collected and managed by states and territories.

This information collection is voluntary and does not require the agencies to collect additional data on USTs/LUSTs beyond the data elements that are already being collected through their previously implemented programs. States and territories will decide the extent of information to be provided.

The EPA intends to implement four options for collecting the UST/LUST

data from states and territories: (1) by developing an Exchange server or other automated service through which states can ''push'' their data to the EPA, (2) by developing a link to the agencies' pre-existing electronic service used to maintain public websites such that the EPA can ''pull'' the data, (3) by allowing states and territories to submit existing databases or spreadsheets through an approved file sharing method, or (4) by EPA obtaining publicly available data from state and territory public agency websites (an option that will be exercised if states and territories do not voluntarily submit their data). For all data transfer options, the EPA will standardize, curate, and enter records into the UST Finder application.

Form numbers: None.

Respondents/affected entities: States and territories with delegated authority to operate UST and LUST programs under 40 CFR parts 280, 281, 282, and 40 CFR 302.4.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 56 (total). This includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Frequency of response: Semiannually.

Total estimated burden: 3,470 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $175,000 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in the estimates: This is a new information collection, therefore, there are no previous burden estimates. The estimated burden reflects assumptions based on Agency experience from the development of the UST Finder application and consultation with affected entities. No comments were received on the burden previously published in the **Federal Register**. Should the EPA request to extend this information collection 3 years from now, changes in burden will be evaluated at that time.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–11007 Filed 5–23–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2002–0059; FRL–10999–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Clean Water State Revolving Fund and Drinking Water State Revolving Fund Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Clean Water State Revolving Fund and Drinking Water State Revolving Fund Programs (EPA ICR Number 1803.09, OMB Control Number 2040–0185) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of two related ICRs that are being consolidated—the Drinking Water State Revolving Fund ICR, which is currently approved through August 31, 2023, and the Clean Water State Revolving Fund ICR, which is currently approved through May 31, 2024. Public comments were previously requested via the **Federal Register** on January 19, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before June 23, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number—EPA–HQ–OW–2002–0059, to EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Howard Rubin, Drinking Water Infrastructure Development Division, Office of Ground Water and Drinking Water, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2051; email address: *Rubin.HowardE@epa.gov.* Or Mark Mylin, Water Infrastructure Division, Office of Wastewater Management, 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–0607; email address: *Mylin.Mark@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of two related ICRs that are being consolidated—the Drinking Water State Revolving Fund ICR, which is currently approved through August 31, 2023, and the Clean Water State Revolving Fund ICR, which is currently approved through May 31, 2024. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on January 19, 2023 during a 60-day comment period (88 FR 3409). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The information collection activities will occur primarily at the program-level through the State Capitalization Grant Agreement/Intended Use Plan and Annual Report. The information on the Intended Use Plan (IUP) is needed annually to describe how the State intends to use available State Revolving Fund (SRF) funds for the year to meet the objectives of the Clean Water Act (CWA) or Safe Drinking Water Act (SDWA) and to further the goal of protecting public health. The Annual Report is needed to provide detailed information on how the State has met its goals and objectives of the previous one or two fiscal years

as stated in the IUP and grant agreement. The CWA and SDWA require this information to ensure the national accountability, adequate public review and comment, fiscal integrity, and consistent management needed to achieve public health and CWA and SDWA compliance objectives.

Additional information about the CWSRFs and DWSRFs are available at *http://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf* and *https://www.epa.gov/dwsrf/how-drinking-water-state-revolving-fund-works#tab-1,* respectively.

This ICR renews the Office of Management and Budget (OMB) Number 2040–0185 DWSRF ICR and provides updated estimates of the reporting burden associated with the information collection activities for both DWSRF ICR and CWSRF ICR.

Form numbers: None.

Respondents/affected entities: Entities affected by this action are states and local governments.

Respondent's obligation to respond: Required to obtain or retain a benefit per the Clean Water Act Title VI and the Safe Drinking Water Act Section 1452.

Estimated number of respondents: 2,836 (total).

Frequency of response: Varies by requirement (*i.e.,* quarterly, semi-annually, annually).

Total estimated burden: 108,519 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $12,874,081 (per year), which includes $6,354,600 annualized capital or operation & maintenance costs.

Changes in the estimates: There is a decrease of 37,500 hours in the total estimated respondent burden compared with the two separate ICRs currently approved by OMB. This change in hourly burden is primarily due to a decrease in annual hourly burden in the DWSRF from the elimination of the application review estimates to align with the estimates from CWSRF.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–11008 Filed 5–23–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2023–0012]

Agency Information Collection Activities: 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Sixty-day notice; request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on a new data collection concerning empty container volumes at intermodal locations. The collection also implements certain provisions of the Ocean Shipping Reform Act of 2022.

DATES: Written comments must be submitted on or before July 24, 2023.

ADDRESSES: Submit comments for the proposed information collection requests to Lucille L. Marvin, Managing Director at email: *omd@fmc.gov.* The FMC will summarize any comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Tara Nielsen at 202–523–5800 or *omd@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (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.

Information Collections Open for Comment

Title: Empty Containers Ready for Use by Location.

OMB Approval Number: 3072–XXXX.

Abstract: The Ocean Shipping Reform Act of 2022 (OSRA 2022) mandated new data collections for Federal agencies to address key gaps in available data. *See* 46 U.S.C. 41110. The Federal Maritime Commission (FMC) was instructed to collect and report on vessel-level tonnage as well as full and empty containers entering and leaving U.S. ports in international trade. The U.S. Department of Transportation's Bureau of Transportation Statistics (BTS) was instructed to collect operational data on intermodal equipment and dwell times. Both agencies have work underway on these data collections. The FMC and BTS have further identified data gaps related to location of intermodal shipping containers (as defined in ISO 668—Series 1 Freight Containers) ready for use by shippers, particularly exporters, at key intermodal locations. Exporters would benefit from current information on the geographic areas where empty ocean intermodal equipment is positioned. FMC is seeking to collect daily data on empty containers on a weekly basis as well as a two-week outlook for containers ready for use at 30 intermodal locations, which will include inland dry ports, intermodal container transfer facilities, and marine terminals.

The information collected would be used to compile and publish a weekly report on the throughput and availability of multiple container types (*e.g.,* refrigerated and dry) and sizes (*e.g.,* 20-foot, 40-foot, and 45-foot) at key intermodal locations. The universe of respondents is the top 12 ocean common carriers, measured by container volume.

Current Actions: This information being submitted contains a new data collection.

Type of Review: New data collection.

Needs and Uses: The Federal Maritime Commission and Bureau of Transportation Statistics will use collected data to produce a weekly report and to monitor current industry trends.

Frequency: This information will be collected weekly each year. There are 52 weeks in a year.

Type of Respondents: The universe will be the 12 largest ocean common carriers, measured by the total volume of containers moving through U.S. ports in international common carriage.

Number of Annual Respondents: The FMC estimates an annual respondent universe of 12 ocean common carriers, each of which will provide data weekly. The total number of responses will be 624. The FMC expects the estimated number of annual respondents to remain constant in the future.

Estimated Time per Response: The time per response is estimated at 2.5 person-hours for reporting requirements.

Total Annual Burden: For the 12 carriers with weekly reporting, the burden is calculated as $12 \times 52 \times 2.5$ hours = 1,560 hours.

William Cody,

Secretary.

[FR Doc. 2023–11082 Filed 5–23–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than June 23, 2023.

A. Federal Reserve Bank of San Francisco: (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to: *sf.fisc.comments.applications@sf.frb.org.*

1. *VB&T Holding Company, LLC;* to become a bank holding company through the formation of its subsidiary bank, Zenith Bank & Trust, both of Scottsdale, Arizona.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–11068 Filed 5–23–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2361; FDA–2020–E–2362; and FDA–2020–E–2363]

Determination of Regulatory Review Period for Purposes of Patent Extension; ENSPRYNG; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is correcting a notice that appeared in the **Federal Register** of July 13, 2022. The document determined the regulatory review period for ENSPRYNG. After review of a timely request for reconsideration by the applicant of the calculation of the applicable regulatory review period of the biologic product ENSPRYNG in that notice, FDA has determined that a revision of the supplementary information section is warranted. This notice corrects the applicable regulatory review period language.

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: In the **Federal Register** of July 13, 2022 (87 FR 41724), on page 41725, in the second column, under ''II. Determination of Regulatory Review Period,'' the first two sentences should be corrected to read as follows: ''FDA has determined that the applicable regulatory review period for ENSPRYNG is 2,494 days. Of this time, 2,128 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase.''

Dated: May 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–10979 Filed 5–23–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee 2023 Schedule of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology (ONC), HHS.

ACTION: Notice of meetings.

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the National Coordinator for Health Information Technology (National Coordinator). The HITAC will hold public meetings throughout 2023. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Michael Berry, Designated Federal Officer, at *Michael.Berry@hhs.gov,* (202) 701–0795.

SUPPLEMENTARY INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory Committee (referred to as the ''HITAC''). The HITAC will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. app.), which sets forth standards for the formation and use of federal advisory committees.

Composition

The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary:
  - 1 of whom shall be appointed to represent the Department of Health and Human Services and
  - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives; and
- Other members are appointed by the Comptroller General of the United States.

Members serve for one-, two-, or three-year terms. All members may be reappointed for a subsequent three-year

term. Each member is limited to two three-year terms, not to exceed six years of service. Members serve without pay, but will be provided per-diem and travel costs for committee services, if warranted.

Recommendations

The HITAC recommendations to the National Coordinator are publicly available at *https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it.*

Public Meetings

The schedule of meetings to be held in 2023 is as follows:

- January 19, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- February 8, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- March 9, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- April 12, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- May 17, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- June 15, 2023, from approximately 9:30 a.m. to 4:00 p.m./Eastern Time at the Mary E. Switzer Federal Building, Suite 1400, 330 C Street SW, Washington, DC 20024 (virtual meeting option available)
- July 13, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- August 17, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- September 14, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- October 19, 2023, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time (virtual meeting)
- November 9, 2023, from approximately 9:30 a.m. to 4:00 p.m./Eastern Time at the Mary E. Switzer Federal Building, Suite 1400, 330 C Street SW, Washington, DC 20024 (virtual meeting option available)

All meetings are open to the public. Additional meetings may be scheduled as needed. For web conference instructions and the most up-to-date information, please visit the HITAC calendar on the ONC website, *www.healthit.gov/topic/federal-advisory-committees/hitac-calendar.*

Contact Person for Meetings: Michael Berry, *Michael.Berry@hhs.gov.* A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Michael Berry for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the National Coordinator on the topics of interoperability, privacy and security, patient access, and use of technologies that support public health. In addition, the committee will also address any administrative matters and hear periodic reports from ONC. ONC intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ONC is unable to post the background material on its website prior to the meeting, the material will be made publicly available on ONC's website after the meeting, at *www.healthit.gov/hitac.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each commenter will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled public comment period, ONC will take written comments after the meeting.

Persons attending in-person HITAC meetings must register in advance; virtual attendance is offered as an alternative. If attending in-person, please allow time to clear building security. All visitors will be escorted to the designated meeting room. Please note that access to electrical outlets may be limited or unavailable.

ONC welcomes the attendance of the public at its HITAC meetings. If you require special accommodations due to a disability, please contact Michael Berry at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., app. 2).

Dated: May 12, 2023.

Michael Berry,

Designated Federal Officer, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2023–11062 Filed 5–23–23; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

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 on Drug Abuse Initial Review Group; Career Development Education and Training Study Section.

Date: June 29, 2023.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Division of Extramural Research, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA–K Alternate SEP.

Date: June 30, 2023.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, *marisa.srivareerat@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11048 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: June 29, 2023.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Hitendra S. Chand, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20852, (240) 627–3245, *hiten.chand@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 19, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11047 Filed 5–23–23; 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 Special Emphasis Panel; RFA–DK–22–022 NIDDK Integrated Physiology of Exocrine and Endocrine Pancreas in Type 1 Diabetes.

Date: July 3, 2023.

Time: 10:00 a.m. to 4:00 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: Tori Stone, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 827–0994, *tori.stone@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 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11039 Filed 5–23–23; 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 Special Emphasis Panel; Time-Sensitive Obesity Review.

Date: June 12, 2023.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11040 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; RFA–TR–22–032: Botulinum Toxin Potency Assay using Tissue Chips.

Date: June 14, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892.

Contact Person: Rahat (Rani) Khan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, 6701 Democracy Boulevard, Room 1078, Bethesda, MD 20892, 301–594–7319, *Rahat.khan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 18, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11049 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/watch=49720*).

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 intramural programs and projects as well as the grant applications and/or proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 16, 2023.

Open: 9:00 a.m. to 2:45 p.m.

Agenda: Presentation of the NEI Director's report, discussion of NEI programs, and concept clearances.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892.

Closed: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate presentation of the EYBSC Report.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Kathleen C. Anderson, Ph.D. Director, Division of Extramural Activities 6700B Rockledge Drive, Room 3440 Bethesda, MD 20892 (301) 451–2020 *kanders1@nei.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed above before the meeting or within 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 19, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11081 Filed 5–23–23; 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: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: June 13–14, 2023.

Time: 8:30 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.

Contact Person: Alexei A Yeliseev, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 3014430552, *yeliseeva@mail.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: June 13–14, 2023.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Vivian Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6208 *tangvw@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics Study Section.

Date: June 14–15, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–2680, *altaf.dar@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA/

REAP: Musculoskeletal, Oral, and Skin Sciences.

Date: June 14, 2023.

Time: 10:00 a.m. to 5:00 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: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Emerging Imaging Technologies and Applications Study Section.

Date: June 15–16, 2023.

Time: 8:00 a.m. to 8:00 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: Zheng Li, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–594–3385, *zheng.li3@nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics 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: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Juraj Bies, 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 1256, *biesj@mail.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Respiratory Integrative Biology and Translational Research 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: Holiday Inn Capitol, 550 C Street SW, Washington, DC 20024.

Contact Person: Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7814, Bethesda, MD 20892, (301) 451–8754, *nussb@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Etiology, Diagnostic, Intervention and Treatment of Infectious Diseases Study Section.

Date: June 15–16, 2023.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 15, 2023.

Time: 9:00 a.m. to 9:30 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: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: June 15–16, 2023.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carmen Angeles Ufret-Vincenty, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0912, *carmen.ufret-vincenty@nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: June 15–16, 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: Xinrui Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences, Integrated Review Group; Nutrition and Metabolism in Health and Disease Study Section.

Date: June 15–16, 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: Jonathan Michael Peterson, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *jonathan.peterson@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Innate Immunity and Inflammation Study Section.

Date: June 15, 2023.

Time: 10:00 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: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, *drammehbs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Societal and Ethical Issues in Research.

Date: June 16, 2023.

Time: 11:30 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: Shahrzad Mavandadi, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–496–4792 *shahrzad.mavandadi@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 19, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11080 Filed 5–23–23; 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; REDI Meeting.

Date: June 22, 2023.

Time: 12:00 p.m. to 6:00 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: Ivan Tadeu Rebustini, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–2879, *Ivan.rebestuni@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 18, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11050 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

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 Nursing Research Special Emphasis Panel; Conflicting Application Review of NRRC Meeting.

Date: June 14, 2023.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Nursing Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 19, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11084 Filed 5–23–23; 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: Infectious Diseases and Immunology B Integrated Review Group; Immunity and Host Defense Study Section.

Date: June 22–23, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bethesdan Hotel Tapestry Collection by Hilton, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: June 22–23, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, VA 22182.

Contact Person: Willard Wilson, Scientific Review Officer, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive Bethesda, MD 20817, 301–867–5309, *willard.wilson@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Musculoskeletal, Orthopedic, Oral, Dermatology and Rheumatology.

Date: June 22–23, 2023.

Time: 8:30 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: Aftab A Ansari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 237–9931, *ansaria@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 22–23, 2023.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov*.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: June 22–23, 2023.

Time: 8:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Tera Bounds, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 613 2822, *boundst@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Drug Development and Therapeutics (CDDT).

Date: June 22–23, 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: Lilia Topol, Ph.D. Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov*.

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vaccines Against Infectious Diseases Study Section.

Date: June 22–23, 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: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 213–9853, *wangjia@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 22–23, 2023.

Time: 9:00 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 (Hybrid Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.

Date: June 22, 2023.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@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 19, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11074 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Minority Health and Health Disparities Special Emphasis Panel, June 29, 2023, 1:00 p.m. to 5:00 p.m., National Institutes of Health, NIMHD, DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892, which was published in the **Federal Register** on April 24, 2023, FR Doc 2023–08557, 88 FR 24825.

This meeting notice is amended to change the meeting start time. The meeting will now be held from 11:00 a.m. to 5:00 p.m. on June 29, 2023. The meeting will be held as a virtual meeting and is closed to the public.

Dated: May 19, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–11075 Filed 5–23–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0249]

National Navigation Safety Advisory Committee; June 2023 Virtual Meeting

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of federal advisory committee virtual meeting.

SUMMARY: The National Navigation Safety Advisory Committee (Committee) will meet virtually to review and discuss matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems. The virtual meeting will be open to the public.

DATES:

Meeting: The Committee will meet virtually on Friday, June 23, 2023, from 1 p.m. until 2:30 p.m. Eastern Daylight Time (EDT). The virtual meeting may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the virtual meeting, submit your written comments no later than June 9, 2023.

ADDRESSES: To join the virtual meeting or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EDT on June 9, 2023, to obtain the needed information. The number of virtual lines are limited and will be available on a first-come, first-served basis.

Pre-registration information: Pre-registration is required for attending the virtual meeting. You must request attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response with attendance instructions.

The National Navigation Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodations due to a disability to fully participate, please email Mr. George Detweiler at *George.H.Detweiler@uscg.mil* or call (202) 372–1566 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting as time permits, but if you want Committee members to review your comment before the meeting, please submit your comments no later than June 9, 2023. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2023–0249]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. You may wish to view the Privacy and Security Notice and the User Notice, which are both available on the homepage of *https://www.regulations.gov* and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. George Detweiler, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593–7581; telephone 202–372–1566, or email at *George.H.Detweiler@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5 U.S.C., ch. 10). The Committee was established on December 4, 2018, by Section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4190, and is codified in 46 U.S.C. 15107. The Committee

operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Navigation Safety Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to maritime collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; and aids to navigation systems.

Agenda

The agenda for the National Maritime Security Advisory Committee meeting is as follows:

Friday, June 23, 2023

(1) Call to Order.
(2) Introduction.
(3) Designated Federal Official Remarks.
(4) Roll call of Committee members and determination of quorum.
(5) Remarks from Committee Leadership.
(6) Discussion of Tasks. The Committee will provide a final report of recommendations on the following task:
   a. Task Statement 23–01: Review of NVIC 01–19 (CH 1) which incorporated recommendations provided by Committee Resolution 21–02—Navigation Safety in and around Offshore Renewable Energy Installations
(7) Public Comment Period.
(8) Adjournment of Meeting.

A copy of all meeting documentation will be available by June 9, 2023, by going to the Coast Guard Homeport website, *https://homeport.uscg.mil/,* selecting the Missions tab, and navigating to the Federal Advisory Committees section. Alternatively, you may contact Mr. George Detweiler as noted in the **FOR FURTHER INFORMATION** section above.

There will be a public comment period at the end of meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments.

Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: May 19, 2023.

Steven E. Ramassini,

Captain, U.S. Coast Guard, Acting Director, Marine Transportation System.

[FR Doc. 2023–11029 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2023–0248]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0118

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0118, Various International Agreement Certificates and Documents; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before July 24, 2023.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2023–0248] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2023–0248], and must be received by July 24, 2023.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Various International Agreement Certificates and Documents.

OMB Control Number: 1625–0118.

Summary: This information collection is associated with the Maritime Labour Convention (MLC), 2006. The Coast Guard established a voluntary inspection program for vessels who wish to document compliance with the requirements of the MLC. U.S. commercial vessels that operate on international routes are eligible to participate. The Coast Guard issues voluntary compliance certificates as proof of compliance with the MLC.

Need: This information is needed to determine if a vessel is in compliance with the Maritime Labour Convention, 2006.

Forms:

- CG–16450, Maritime Labour Certificate (Statement of Voluntary Compliance).
- CG–16450A, Interim Maritime Labour Certificate (Statement of Voluntary Compliance).
- CG–16450B, Declaration of Maritime Labour Compliance—Part I (Statement of Voluntary Compliance).
- CG–16450C, United States Coast Guard, Maritime Labour Convention, 2006 Inspection Report.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 653 hours a year to 561 hours a year, due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: May 18, 2023.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023–11073 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2023–0014]

Commercial Customs Operations Advisory Committee

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; notice of federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, June 14, 2023, in Arlington, VA. The meeting will be open for the public to attend in person or via webinar. The in-person capacity is limited to 75 persons for public attendees.

DATES: The COAC will meet on Wednesday, June 14, 2023, from 1:00 p.m. to 5:00 p.m. EDT. Please note that the meeting may close early if the committee has completed its business. Registration to attend and comments must be submitted no later than June 9, 2023.

ADDRESSES: The meeting will be held at Renaissance Arlington Capital View Hotel, 2800 S. Potomac Ave., Arlington, VA 22202 in Salons 5 and 6. For virtual participants, the webinar link and conference number will be posted by 5:00 p.m. EDT on June 13, 2023, at *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.* For information or to request special assistance for the meeting, contact Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket Number USCBP–2023–0014. To submit a comment, click the ''Comment'' button located on the top-left hand side of the docket page.
- *Email: tradeevents@cbp.dhs.gov.* Include Docket Number USCBP–2023–0014 in the subject line of the message.

Comments must be submitted in writing no later than June 9, 2023, and must be identified by Docket No. USCBP–2023–0014. All submissions received must also include the words ''Department of Homeland Security.'' All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings* and *www.regulations.gov.* Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at *tradeevents@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, Title 5 U.S.C., ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: Meeting participants may attend either in person or via webinar. All participants must register using one of the methods indicated below:

For members of the public who plan to participate in person, please register online at *https://teregistration.cbp.gov/index.asp?w=321* by 5:00 p.m. EDT on June 9, 2023. For members of the public who are pre-registered to attend the meeting in person and later need to cancel, please do so by 5:00 p.m. EDT on June 9, 2023, utilizing the following link: *https://teregistration.cbp.gov/cancel.asp?w=321.*

For members of the public who plan to participate via webinar, the webinar link and conference number will be posted by 5:00 p.m. EDT on June 13, 2023, at *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

The COAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mrs. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

There will be multiple public comment periods held during the meeting on June 14, 2023. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Next Generation Facilitation Subcommittee will provide updates on

its task forces and working groups. It is expected there will be recommendations for the committee's consideration from the 21st Century Customs Framework (21CCF) Task Force and Focus Group, along with a close out report for this task force. The Customs Interagency Industry Working Group (CII) (formerly the One U.S. Government Working Group) will provide an update on the work addressed this past quarter, which included identifying possible Partner Government Agencies for representation on the working group and discussion of the legislative trade proposals stemming from the 21CCF Task Force and Focus Group. An update is expected on the progress of the Automated Commercial Environment (ACE) 2.0 Working Group regarding its review of the CBP ACE 2.0 Concept of Operations processes. The E-Commerce Task Force will provide updates regarding its discussions this past quarter pertaining to duplicate messaging related to security and trade filings. The Passenger Air Operations (PAO) Working Group aims to identify ways to modernize passenger processing rules and regulations, streamline the passenger experience at U.S. ports of entry, and identify challenges that affect operations. While this is a new group, the expectation is that recommendations will be developed and submitted for consideration at future COAC public meetings.

2. The Rapid Response Subcommittee will provide updates from the Broker Modernization Working Group and the United States-Mexico-Canada Agreement (USMCA) Chapter 7 Working Group. The Broker Modernization Working Group meets monthly and continues to focus on the 19 CFR part 111 final rules relating to Modernization of the Customs Broker Regulations, Continuing Education for Licensed Customs Brokers, and Customs Broker Licensing Exams. The USMCA Chapter 7 Working Group meets bi-weekly. Its current focus is to review the Chapter 7 articles of the USMCA and identify gaps in implementation between the United States, Mexico, and Canada.

3. The Secure Trade Lanes Subcommittee will provide updates on its five active working groups: the Export Modernization Working Group, the In-Bond Working Group, the Trade Partnership and Engagement Working Group, the Cross-Border Recognition Working Group, and the Pipeline Working Group. The Export Modernization Working Group has continued its work on the electronic export manifest pilot program and will provide updates on its progress. The In-Bond Working Group may provide recommendations for the committee's consideration and will provide updates on the implementation of previously submitted recommendations. The Trade Partnership and Engagement Working Group has focused its work on previous recommendations to refine the language of possible benefits for Customs Trade Partnership Against Terrorism Trade Compliance partners and may provide additional recommendations for the committee's consideration. The Cross-Border Recognition and Pipeline working groups will provide updates on their work toward developing recommendations for the committee's consideration.

4. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Intellectual Property Rights Working Group (IPRWG) will provide updates relating to the development of a portal on the CBP Intellectual Property Rights (IPR) web page and to CBP's implementation of the IPRWG's past recommendations concerning the automation of detention and seizure. The Bond Working Group will report on the ongoing discussions and status updates for eBond requirements. The Forced Labor Working Group will provide updates regarding its work and discussions regarding the Uyghur Forced Labor Prevention Act (UFLPA) and anticipates making recommendations for the committee's consideration during the meeting.

Meeting materials will be available on June 5, 2023, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: May 18, 2023.

Felicia M. Pullam,

Executive Director, Office of Trade Relations.

[FR Doc. 2023–11022 Filed 5–23–23; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2339]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 22, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2339, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act

of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Plymouth County, Massachusetts (All Jurisdictions) Project: 15–01–0633S Preliminary Date: February 03, 2023	
Town of Abington	Town Hall, 500 Gliniewicz Way, Abington, MA 02351.
Town of Hingham	Town Hall, 210 Central Street, Hingham, MA 02043.
Town of Norwell	Town Hall, 345 Main Street, Norwell, MA 02061.
Town of Rockland	Town Hall, 242 Union Street, Rockland, MA 02370.
Suffolk County, Massachusetts (All Jurisdictions) Project: 15–01–0633S Preliminary Date: February 03, 2023	
City of Boston	City Hall, 1 City Hall Square, Boston, MA 02201.
City of Chelsea	City Hall, 500 Broadway, Chelsea, MA 02150.
City of Revere	City Hall, 281 Broadway, Revere, MA 02151.
Licking County, Ohio and Incorporated Areas Project: 14–05–4454S Preliminary Date: March 31, 2022	
City of Pataskala	Pataskala City Hall, 621 West Broad Street, Pataskala, OH 43062.
City of Reynoldsburg	Municipal Building, 7232 East Main Street, Reynoldsburg, OH 43068.
Unincorporated Areas of Licking County	The Donald D. Hill County Administration Building, 20 South Second Street, Newark, OH 43055.

[FR Doc. 2023–11096 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2340]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 22, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address

listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2340, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Stone County, Missouri and Incorporated Areas Project: 19–07–0060S Preliminary Date: November 14, 2022	
City of Branson West	City Hall, 110 Silver Lady Lane, Branson West, MO 65737.
City of Crane	City Hall, 120 North Commerce Street, Crane, MO 65633.
City of Galena	City Hall, 111 Main Street, Galena, MO 65656.
City of Hurley	City Hall, 202 South Walnut Street, Hurley, MO 65675.
City of Kimberling City	City Hall, 34 Kimberling Boulevard, Kimberling City, MO 65686.
City of Reeds Spring	City Hall, 22597 Main Street, Reeds Spring, MO 65737.
Unincorporated Areas of Stone County	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Blue Eye	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Coney Island	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.
Village of Indian Point	Indian Point Government Office, 957 Indian Point Road, Branson, MO 65616.
Village of McCord Bend	Stone County Courthouse, 108 East 4th Street, Galena, MO 65656.

[FR Doc. 2023–11099 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0012; OMB No. 1660–0113]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP)

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of renewal and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the FEMA Preparedness Grants: Tribal Homeland Security Grant Program (THSGP). The THSGP investment justification allows Indian Tribes to apply for Federal funding to support efforts to achieve target capabilities related to preventing, preparing for, protecting against, or responding to acts of terrorism.

DATES: Comments must be submitted on or before July 24, 2023.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2023–0012. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cornelius Jackson, Preparedness Officer, FEMA Grant Programs Directorate, at (202) 786–9508 or *Cornelius.Jackson@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the THSGP is to make grants available to Federally-recognized ''directly eligible tribes'', as defined by the Homeland Security Act, and to provide Tribes with the ability to develop and deliver core capabilities using the combined efforts of the whole community, rather than the exclusive effort of any single organization or level of government. The THSGP's allowable costs support efforts of Tribes to build and sustain core capabilities to prepare for, prevent, protect against, and respond to acts of terrorism. The THSGP also plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving FEMA's National Preparedness Goal of a secure and resilient Nation. Federally-recognized Tribes are those Tribes appearing on the list published by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103–454) (25 U.S.C. 5131). ''Directly eligible tribes'' are defined in section 2001 of the Homeland Security Act of 2002, as amended (Pub. L. 107–296) (6 U.S.C. 601).

Collection of Information

Title: Tribal Homeland Security Grant Program (THSGP) Investment Justification Template.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0113.

FEMA Forms: FEMA Form FF–207–FY–22–118 (formerly 089–22), Tribal Homeland Security Grant Program (THSGP) Investment Justification Template.

Abstract: This information is being collected for the primary purpose of facilitating correspondence between the grant applicant and FEMA and for determining eligibility and administration of FEMA Preparedness Grant Programs, specifically the Tribal Homeland Security Grant Program. The THSGP provides supplemental funding to directly eligible Tribes to help strengthen the nation against risks associated with potential terrorist attacks. This program provides funds to build capabilities at the State, Local, Territorial and Tribal levels and implement goals and objectives included in state homeland security strategies.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 120.

Estimated Number of Responses: 120.

Estimated Total Annual Burden Hours: 18,010.

Estimated Total Annual Respondent Cost: $962,454.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $482,186.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–11087 Filed 5–23–23; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2336]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood

Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 22, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2336, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Hinsdale County, Colorado and Incorporated Areas Project: 20–08–0053S Preliminary Date: May 20, 2022	
Town of Lake City	Town Hall, 230 North Bluff Street, Lake City, CO 81235.
Unincorporated Areas of Hinsdale County	Hinsdale County Courthouse, 311 Henson Street, Lake City, CO 81235.
Carbon County, Wyoming and Incorporated Areas Project: 15–08–0119S Preliminary Date: September 8, 2022	
Town of Saratoga	Town Hall, 110 East Spring Avenue, Saratoga, WY 82331.
Unincorporated Areas of Carbon County	Carbon County Planning and Development Department, 215 West Buffalo Street, Suite 336, Rawlins, WY 82301.

[FR Doc. 2023–11098 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *https://msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Colorado:					
Arapahoe (FEMA Docket No.: B–2321).	Unincorporated areas of Arapahoe County (23–08–0031X).	The Honorable Nancy Jackson, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80210.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	Apr. 21, 2023	080011
Jefferson (FEMA Docket No.: B–2321).	Unincorporated areas of Jefferson County (22–08–0193P).	The Honorable Andy Kerr, Chair, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Planning and Zoning Division, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Apr. 21, 2023	080087
Florida:					
Bay (FEMA Docket No.: B–2321).	Unincorporated areas of Bay County (22–04–0621P).	The Honorable Robert Carroll, Chair, Bay County Board of Commissioners, 840 West 11th Street, Panama City, FL 32401.	Bay County Planning Department, 840 West 11th Street, Panama City, FL 32401.	Apr. 19, 2023	120004
Collier (FEMA Docket No.: B–2314).	City of Marco Island (22–04–3314P).	Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	Apr. 7, 2023	120426
Duval (FEMA Docket No.: B–2314).	City of Jacksonville (22–04–3150P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Planning and Development Department, 214 North Hogan Street, Suite 300, Jacksonville, FL 32202.	Apr. 11, 2023	120077
Manatee (FEMA Docket No.: B–2304).	Unincorporated areas of Manatee County (22–04–5644P).	Scott Hopes, Manatee County Administrator, 1112 Manatee Avenue, West Bradenton, FL 34205.	Manatee County Building and Development Services Department, 1112 Manatee Avenue, West Bradenton, FL 34205.	Apr. 21, 2023	120153
Marion (FEMA Docket No.: B–2314).	City of Ocala (22–04–4601P).	Peter Lee, Manager, City of Ocala, 110 Southeast Watula Avenue, Ocala, FL 34471.	Engineering and Water Resources Department, 1805 Northeast 30th Avenue, Ocala, FL 34470.	Apr. 11, 2023	120330

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Orange (FEMA Docket No.: B–2304).	City of Orlando (22–04–4870P).	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, Orlando, FL 32801.	Public Works Department Engineering Division, 400 South Orange Avenue, Orlando, FL 32801.	Apr. 7, 2023	120186
Palm Beach (FEMA Docket No.: B–2314).	City of Greenacres (22–04–5105P).	Andrea McCue, Manager, City of Greenacres, 5800 Melaleuca Lane, Greenacres, FL 33463.	City Hall, 5800 Melaleuca Lane, Greenacres, FL 33463.	Apr. 17, 2023	120203
Sarasota (FEMA Docket No.: B–2314).	Unincorporated areas of Sarasota County (22–04–4503P).	The Honorable Alan Maio, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Apr. 12, 2023	125144
Sarasota (FEMA Docket No.: B–2314).	Unincorporated areas of Sarasota County (22–04–4888P).	The Honorable Alan Maio, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	Apr. 12, 2023	125144
Massachusetts:					
Barnstable (FEMA Docket No.: B–2314).	Town of Falmouth (22–01–0808P).	The Honorable Nancy R. Taylor, Chair, Town of Falmouth Select Board, 59 Town Hall Square, Falmouth, MA 02540.	Building Department, 59 Town Hall Square, Falmouth, MA 02540.	Apr. 10, 2023	255211
Plymouth (FEMA Docket No.: B–2314).	Town of Marshfield (21–01–0914P).	The Honorable Stephen R. Darcy, Chair, Town of Marshfield Select Board, 870 Moraine Street, Marshfield, MA 02050.	Planning Department, 870 Moraine Street, Marshfield, MA 02050.	Apr. 10, 2023	250273
North Carolina: Durham (FEMA Docket No.: B–2314).	City of Durham (21–04–5883P).	The Honorable Elaine O'Neal, Mayor, City of Durham, 101 City Hall Plaza, Durham, NC 27701.	Durham City-County Hall, 101 City Hall Plaza, Durham, NC 27701.	Apr. 20, 2023	370086
Oklahoma: Grady (FEMA Docket No.: B–2314).	City of Chickasha (22–06–0966P).	The Honorable Chris Mosley, Mayor, City of Chickasha, 117 North 4th Street, Chickasha, OK 73018.	Community Development Department, 117 North 4th Street, Chickasha, OK 73018.	Apr. 14, 2023	400234
Pennsylvania: Bucks (FEMA Docket No.: B–2314).	Borough of Doylestown (22–03–0568P).	John Davis, Manager, Borough of Doylestown, 10 Doyle Street, Doylestown, PA 18901.	Building and Zoning Department, 10 Doyle Street, Doylestown, PA 18901.	Apr. 10, 2023	421410
South Carolina: Charleston (FEMA Docket No.: B–2314).	Unincorporated areas of Charleston County (22–04–4293P).	The Honorable Teddie E. Pryor, Sr., Chair, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	Apr. 19, 2023	455413
South Dakota:					
Pennington (FEMA Docket No.: B–2314).	City of Rapid City (22–08–0282P).	The Honorable Steve Allender, Mayor, City of Rapid City, 300 6th Street, Rapid City, SD 57701.	Public Works, Engineering Services Department, 300 6th Street, Rapid City, SD 57701.	Apr. 19, 2023	465420
Pennington (FEMA Docket No.: B–2314).	Unincorporated areas of Pennington County (22–08–0282P).	The Honorable Gary Drewes, Chair, Pennington County Board of Commissioners, 130 Kansas City Street, Suite 100, Rapid City, SD 57701.	Pennington County Planning Department, 832 Saint Joseph Street, Rapid City, SD, 57701.	Apr. 19, 2023	460064
Texas:					
Collin (FEMA Docket No.: B–2321).	City of Frisco, (22–06–1755P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Development Engineers Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Apr. 24, 2023	480134
Collin (FEMA Docket No.: B–2321).	City of Wylie (22–06–1291P).	The Honorable Matthew Porter, Mayor, City of Wylie, 300 County Club Road, Building 100, Wylie, TX 75098.	City Hall, 300 County Club Road, Building 100, Wylie, TX 75098.	Apr. 17, 2023	480759
Collin (FEMA Docket No.: B–2321).	Unincorporated areas of Collin County (22–06–1291P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	Apr. 17, 2023	480130
Denton (FEMA Docket No.: B–2304).	Unincorporated areas of Denton County (22–06–1798P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	Apr. 24, 2023	480774
Ellis (FEMA Docket No.: B–2321).	City of Waxahachie (22–06–1707P).	The Honorable David Hill, Mayor, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	Public Works and Engineering Department, 401 South Rogers Street, Waxahachie, TX 75165.	Apr. 13, 2023	480211
Grayson (FEMA Docket No.: B–2314).	City of Van Alstyne (22–06–2710P).	The Honorable Jim Atchison, Mayor, City of Van Alstyne, P.O. Box 247, Van Alstyne, TX 75495.	City Hall, 152 North Main Drive, Van Alstyne, TX 75495.	Apr. 10, 2023	481620
Grayson (FEMA Docket No.: B–2314).	Unincorporated areas of Grayson County (22–06–2710P).	The Honorable Bill Magers, Grayson County Judge, 100 West Houston Street, Sherman, TX 75090.	Grayson County Courthouse, 100 West Houston Street, Sherman, TX 75090.	Apr. 10, 2023	480829
Kendall (FEMA Docket No.: B–2321).	Unincorporated areas of Kendall County (21–06–3424P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Boerne, TX 78006.	Kendall County Engineer and Development Management Department, 201 East San Antonio Avenue, Boerne, TX 78006.	Apr. 17, 2023	480417

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Kleberg (FEMA Docket No.: B–2321).	Unincorporated areas of Kleberg County (22–06–1663P).	The Honorable Rudy Madrid, Kleberg County Judge, P.O. Box 752, Kingsville, TX 78364.	Kleberg County Courthouse, 700 East Kleberg Avenue, Kingsville, TX 78363.	Apr. 14, 2023	480423
Medina (FEMA Docket No.: B–2314).	Unincorporated areas of Medina County (22–06–2180P).	The Honorable Chris Shacharit, Medina County Judge, 1300 Avenue M, Room 250, Hondo, TX 78861.	Medina County Environmental Health Department, 1502 Avenue K, Hondo, TX 78861.	Apr. 7, 2023	480472
Wharton (FEMA Docket No.: B–2321).	Unincorporated areas of Wharton County (22–06–0763P).	The Honorable Phillip Spenrath, Wharton County Judge, 100 South Fulton Street, Suite 100, Wharton, TX 77488.	Wharton County Annex D, 315 East Milam Street, Suite 102, Wharton, TX 77488.	Apr. 13, 2023	480652
Virginia: Prince William (FEMA Docket No.: B–2321).	Unincorporated areas of Prince William County (22–03–0474P).	Elijah Johnson, Acting Executive, Prince William County, 1 County Complex Court, Prince William, VA 22192.	Prince William County Water Management Branch, 5 County Complex Court, Suite 170, Prince William, VA 22192.	Apr. 14, 2023	510119

[FR Doc. 2023–11094 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of October 19, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Chilton County, Alabama and Incorporated Areas Docket No.: FEMA–B–2177	
City of Calera	Engineering Department, 1074 10th Street, Calera, AL 35040.
City of Clanton	Building Department, 505 2nd Avenue North, Room 225, Clanton, AL 35045.
City of Jemison	City Hall, 14 Padgett Lane, Jemison, AL 35085.
Town of Thorsby	Town Hall, 21060 U.S. Highway 31, Thorsby, AL 35171.
Unincorporated Areas of Chilton County	Chilton County Road Department, 272 Airport Lane, Clanton, AL 35045.
Elmore County, Alabama and Incorporated Areas Docket No.: FEMA–B–2177	
City of Wetumpka	City Hall, 408 South Main Street, Wetumpka, AL 36092.

Community	Community map repository address
Town of Elmore	Town Hall, 485 Jackson Street, Elmore, AL 36025.
Unincorporated Areas of Elmore County	Elmore County Highway Department, 155 County Shop Road, Wetumpka, AL 36092.
Crawford County, Ohio and Incorporated Areas Docket No.: FEMA–B–2241	
City of Galion	City Hall, 301 Harding Way East, Galion, OH 44833.
Unincorporated Areas of Crawford County	Crawford County Engineer's Office, 815 Whetstone Street, Bucyrus, OH 44820.
DEllis County, Texas and Incorporated Areas DDocket No.: FEMA–B–2217	
City of Cedar Hill	Public Works Department, 285 Uptown Boulevard, Cedar Hill, TX 75104.
City of Ennis	City Hall, 107 North Sherman Street, Ennis, TX 75119.
City of Grand Prairie	Municipal Complex, Stormwater Department, 300 West Main Street, Grand Prairie, TX 75050.
City of Mansfield	City Hall, 1200 East Broad Street, Mansfield, TX 76063.
City of Midlothian	City Hall, 104 West Avenue E, Midlothian, TX 76065.
City of Oak Leaf	City Hall, 301 Locust Drive, Oak Leaf, TX 75154.
City of Ovilla	City Hall, 105 Cockrell Hill Road, Ovilla, TX 75154.
City of Pecan Hill	Pecan Hill City Hall, 1094 South Lowrance Road, Red Oak, TX 75154.
City of Red Oak	City Hall, 101 South Live Oak Street, Red Oak, TX 75154.
City of Venus	City Hall, 700 West US Highway 67, Venus, TX 76084.
City of Waxahachie	City Hall, 401 South Rogers Street, Waxahachie, TX 75165.
Unincorporated Areas of Ellis County	Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.
Thurston County, Washington and Incorporated Areas Docket No.: FEMA–B–2225	
City of Yelm	City Hall, 106 2nd Street Southeast, Yelm, WA 98597.
Nisqually Indian Tribe	Nisqually Indian Tribe Planning and Economic Development, 4820 She-Nah-Num Drive Southeast, Olympia, WA 98513.
Unincorporated Areas of Thurston County	Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Building One, Olympia, WA 98502.
Chippewa County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2218	
City of Chippewa Falls	City Hall, Inspection Zoning Office, 30 West Central Street, Chippewa Falls, WI 54729.
Waukesha County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–2241	
City of Brookfield	City Hall, 2000 North Calhoun Road, Brookfield, WI 53005.
City of Muskego	City Hall, W182S8200 Racine Avenue, Muskego, WI 53150.
City of New Berlin	City Hall, 3805 South Casper Drive, New Berlin, WI 53151.
City of Pewaukee	Pewaukee City Hall, W240N3065 Pewaukee Road, Pewaukee, WI 53072.
City of Waukesha	City Hall, 201 Delafield Street, Waukesha, WI 53188.
Unincorporated Areas of Waukesha County	Waukesha County Administration Building, 515 West Moreland Boulevard, Waukesha, WI 53188.
Village of Big Bend	Village Hall, W230S9185 Nevins Street, Big Bend, WI 53103.
Village of Dousman	Village Hall, 118 South Main Street, Dousman, WI 53118.
Village of Elm Grove	Village Hall, 13600 Juneau Boulevard, Elm Grove, WI 53122.
Village of Hartland	Village Hall, 210 Cottonwood Avenue, Hartland, WI 53029.
Village of Lannon	Village Hall, 20399 West Main Street, Lannon, WI 53046.
Village of Menomonee Falls	Village Hall, W156N8480 Pilgrim Road, Menomonee Falls, WI 53051.
Village of Mukwonago	Village Hall, 440 River Crest Court, Mukwonago, WI 53149.
Village of Pewaukee	Pewaukee Village Hall, 235 Hickory Street, Pewaukee, WI 53072.
Village of Sussex	Village Hall, N64W23760 Main Street, Sussex, WI 53089.
Village of Vernon	Village Hall, W249S8910 Center Drive, Vernon, WI 53103.
Village of Wales	Village Hall, 129 West Main Street, Wales, WI 53183.
Village of Waukesha	Village Hall, W250S3567 Center Road, Waukesha, WI 53189.

[FR Doc. 2023–11097 Filed 5–23–23; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2337]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before August 22, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2337, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Jackson County, Arkansas and Incorporated Areas Project: 20–06–0064S Preliminary Date: January 11, 2023	
City of Campbell Station	Campbell Station City Hall, 5005 Keeter Circle, Tuckerman, AR 72473.
City of Diaz	Diaz City Hall, 3401 South Main Street, Newport, AR 72112.
City of Newport	City Hall, 615 3rd Street, Newport, AR 72112.
City of Tupelo	Community Center, 15 Pecan Circle, Tupelo, AR 72169.
Town of Jacksonport	Diaz City Hall, 3401 South Main Street, Newport, AR 72112.
Town of Weldon	Weldon Mayor's Office, 1404 Weldon Avenue, Newport, AR 72112.
Unincorporated Areas of Jackson County	Diaz City Hall, 3401 South Main Street, Newport, AR 72112.

Community	Community map repository address
Thomas County, Georgia and Incorporated Areas Project: 18–04–0005S Preliminary Date: February 19, 2021	
City of Pavo	City Hall, 1010 West Harris Street, Pavo, GA 31778.
Breathitt County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
City of Jackson	City Hall, 333 Broadway Street, Jackson, KY 41339.
Unincorporated Areas of Breathitt County	Breathitt County Courthouse, 1137 Main Street, Suite 205, Jackson, KY 41339.
Knott County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
City of Hindman	City Hall, 10 Professor Clarke Circle, Hindman, KY 41822.
Unincorporated Areas of Knott County	Knott County Courthouse, 54 West Main Street, Hindman, KY 41822.
Lee County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
City of Beattyville	Lee County Courthouse, 256 Main Street, Beattyville, KY 41311.
Unincorporated Areas of Lee County	Lee County Courthouse, 256 Main Street, Beattyville, KY 41311.
Letcher County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
City of Fleming-Neon	City Hall, 955 Highway 317, Fleming-Neon, KY 41840.
City of Whitesburg	City Hall, 38 East Main Street, Whitesburg, KY 41858.
Unincorporated Areas of Letcher County	Letcher County Courthouse, 156 Main Street, Suite 107, Whitesburg, KY 41858.
Perry County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
City of Hazard	City Hall, 700 Main Street, Hazard, KY 41701.
Unincorporated Areas of Perry County	Perry County Courthouse, 481 Main Street, 1st Floor, Hazard, KY 41701.
Wolfe County, Kentucky and Incorporated Areas Project: 20–04–0003S Preliminary Date: October 27, 2022	
Unincorporated Areas of Wolfe County	Wolfe County Courthouse, 16 Court Street, Campton, KY 41301.

[FR Doc. 2023–11095 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0012]

Notice of President's National Infrastructure Advisory Council Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Infrastructure Advisory Council (NIAC) meeting.

DATES:

Meeting Registration: Registration is required to attend the meeting and must be received no later than 5:00 p.m. Eastern Time (ET) on June 15, 2023. For more information on how to participate, please contact *NIAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on June 15, 2023.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on June 15, 2023.

Meeting Date: The NIAC will meet on June 21, 2023, from 1:00 p.m. to 4:00 p.m. ET. The meeting may close early if the council has completed its business.

ADDRESSES: The meeting will be held virtually and will be open to the public, per 41 CFR 102–3.150(a)(4). Requests to participate will be accepted and processed in the order in which they are received. For access to the meeting, information on services for individuals with disabilities, or to request special assistance, please email *NIAC@cisa.dhs.gov* by 5:00 p.m. ET on June 15, 2023. The NIAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Erin McJeon at *NIAC@cisa.dhs.gov* as soon as possible.

Comments: The council will consider public comments on issues as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials for potential discussions during the meeting will be available for review at *https://www.cisa.gov/niac* by June 14, 2023. Comments should be submitted by 5:00 p.m. ET on June 15, 2023 and must be identified by Docket Number CISA–2023–0012. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the

instructions for submitting written comments.

• *Email: NIAC@cisa.dhs.gov.* Include the Docket Number CISA–2023–0012 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to read the Privacy & Security Notice which is available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the National Infrastructure Advisory Council, please go to *www.regulations.gov* and enter docket number CISA–2023–0012.

A public comment period will take place from 2:30 p.m. to 2:40 p.m. Speakers who wish to participate in the public comment period must email *NIAC@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Erin McJeon, 202–819–6196, *NIAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NIAC is established under section 10 of E.O. 13231 issued on October 16, 2001, continued and amended under the authority of E.O. 14048, dated September 30, 2021. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. ch. 10 (Pub. L. 117–286). The NIAC provides the President, through the Secretary of Homeland Security, advice on the security and resilience of the Nation's critical infrastructure sectors.

Agenda: The National Infrastructure Advisory Council will meet virtually in an open session on Wednesday, June 21, 2023, from 1:00 p.m. to 4:00 p.m. ET to discuss NIAC activities. The meeting will include (1) a period for public comment; (2) a keynote address on critical infrastructure security and resilience; (3) a report to the Council from the Water Security Subcommittee; (4) deliberation and vote on Water Security Study recommendations; and (5) an update on the Electrification Study.

Dated: May 18, 2023.

Erin McJeon,

Designated Federal Officer, National Infrastructure Advisory Council, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2023–11023 Filed 5–23–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ES_FRN_MO45000171594]

Notice of Filing of Plats of Surveys; Iowa

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of surveys of the following described lands are scheduled to be officially filed in the Bureau of land Management (BLM), Eastern States Office, Falls Church, VA, 30 days from the date of this publication. The surveys, executed at the request of the identified agencies, are required for the management of these lands.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on June 23, 2023.

ADDRESSES: Written notices protesting any of these surveys must be sent to the State Director, BLM Eastern States, 5275 Leesburg Pike, Suite 102A, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Frank Radford, Chief Cadastral Surveyor for Eastern States; (703) 558–7759; email: *fradford@blm.gov;* or U.S. Postal Service: BLM–ES, 5275 Leesburg Pike, Suite 102A, Falls Church, VA 22041. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The dependent resurvey of a metes and bounds survey of the westerly boundary of lands owned and administered by the United States Army Corps of Engineers, Rock Island District, in Section 2, Township 79 North, Range 5 East, and Sections 11, 12, 14, 23, 24, 26 and 35, Township 80 North, Range 5 East, of the Fifth Principal Meridian in the State of Iowa; and the dependent resurvey of a metes and bounds survey of the westerly boundary of lands owned and administered by the United States Army Corps of Engineers, Rock Island District, in Section 6, Township 80 North, Range 6 East, and Sections 31 and 33, Township 81 North, Range 6 East, of the Fifth Principal Meridian in the State of Iowa. Survey requested by the United States Army Corps of Engineers, Rock Island District.

A person or party who wishes to protest a survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A notice of protest is considered filed on the date it is received by the State Director for Eastern States during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a notice of protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the next business day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, please be aware that your entire protest, 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.

A copy of the described plats will be placed in the open files, and available to the public, as a matter of information.

Authority: 43 U.S.C. chap. 3.

Frank Radford,

Chief Cadastral Surveyor for Eastern States.

[FR Doc. 2023–11051 Filed 5–23–23; 8:45 am]

BILLING CODE 4331–18–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035912; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Army Corps of Engineers, Nashville District, Nashville, TN and the University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Army Corps of Engineers, Nashville District, in cooperation with the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Stewart County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Dr. Valerie McCormack, Archaeologist, U.S. Army Corps of Engineers, Nashville District, 110 9th Avenue South, Room A–405, Nashville, TN 37203, telephone (615) 736–7847, email *valerie.j.mccormack@usace.army.mil* and Dr. Ozlem Kilic, Vice Provost for Academic Affairs, University of Tennessee, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the U.S. Army Corps of Engineers, Nashville District. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the U.S. Army Corps of Engineers, Nashville District.

Description

In June and July of 1974, human remains representing, at minimum, eight individuals were removed from 40SW23, the Stone Site or Bear Creek Site, in Stewart County, TN, during excavations conducted by Murray State University. This site lies within the Barkley Dam operating project. Subsequently, these ancestors and objects were transferred to UTK, where they currently reside. The human remains belong to seven infants and one child of indeterminate age. No known individuals were identified. The 15 associated funerary objects are eight faunal bones and teeth, one shell, one potsherd, one rock, one lot consisting of charcoal fragments, and three earplug-shaped items composed of a fibrous plant material. (A Notice of Inventory Completion for other human remains and associated funerary objects from this site was published in the **Federal Register** on July 19, 2017, and a correction notice was published in the **Federal Register** on July 6, 2020. The repatriation and reburial of those human remains and associated funerary objects took place in August of 2018.)

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission or the United States Court of Claims and treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the U.S. Army Corps of Engineers, Nashville District has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- The 15 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 23, 2023. If competing requests for disposition are received, the U.S. Army Corps of Engineers, Nashville District must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The U.S. Army Corps of Engineers, Nashville District is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11017 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035909; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human

remains were removed from King County, WA.

DATES: Repatriation of the human remains in this notice may occur on or after June 23, 2023.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and Museum Studies Central Washington University, 400 University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Central Washington University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Central Washington University.

Description

In 1951, human remains representing, at minimum, one individual were removed from Vashon Island near Judd Creek in King County, WA, by landowner Vernon Lamoreux. In 1951, the human remains were donated to the Burke Museum, University of Washington, and in 1965, they were accessioned (Burke Accession number 1965–78). In 1974, the Burke Museum legally transferred one skeletal element belonging to this individual to Central Washington University, where it was assigned accession ID Box AK and catalog no. AK–21. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: biological, geographical, historical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Central Washington University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Puyallup Tribe of the Puyallup Reservation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, Central Washington University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remain. Central Washington University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11014 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035904; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Knife River Indian Villages National Historic Site, Stanton, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Knife River Indian Villages National Historic Site (KNRI) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Mercer County, ND.

DATES: Repatriation of the human remains in this notice may occur on or after June 23, 2023.

ADDRESSES: Alisha Deegan, Superintendent, Knife River Indian Villages National Historic Site, 564 County Road 37, Stanton, ND 58571, telephone (701) 745–3300, email *alisha_deegan@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Superintendent, KNRI. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by KNRI.

Description

In 1980, human remains representing, at minimum, three individuals were removed from Big Hidatsa (32ME12) in Mercer County, ND, during an archeological investigation that was conducted to discover more about the site through surface reconnaissance and photogrammetric mapping. In August 2019, a small bag was discovered inside a box that contained bones of identified mammals. After an examination, it was confirmed that the bones inside the small bag were human. No known individuals were identified. No associated funerary objects are present.

Cultural affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, historical information, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after

consultation with the appropriate Indian Tribes and Native Hawaiian organizations, KNRI has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, KNRI must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. KNRI is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11009 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035908; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Kitsap County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and Museum Studies, Central Washington University, 400 University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Central Washington University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Central Washington University.

Description

In October of 1949, human remains representing, at minimum, one individual were removed by Sverre Halvorsen Seabold from under a stump while clearing a driveway on Bainbridge Island, Kitsap County, WA. In January of 1950, Sverre Halvorsen Seabold donated the human remains to the Burke Museum, University of Washington, where they were assigned accession no. 3578 and catalog no. 19–13. In 1974, the Burke Museum legally transferred the human remains and six associated funerary objects to Central Washington University, where they were assigned accession ID Box BA. The human remains consist of a cranium and portions of the postcranial skeleton. No known individuals were identified. The six associated funerary objects are four shell fragments and two small animal bone fragments.

In 1958, human remains representing, at minimum, one individual were removed from the ''City Park'' (Evergreen Park) in the city of Bremerton, Kitsap, WA, by staff at Olympic Jr. College (now Olympic College). The human remains were sent to the Burke Museum, University of Washington and accessioned in 1963 (no. 1963–22). In 1974, the Burke Museum legally transferred the human remains to Central Washington University, where they were assigned CWU accession ID Box BC. On the outside of the box containing these human remains is written ''Found in City Park, Bremerton 1958.'' No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, biological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Central Washington University has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The six objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Suquamish Indian Tribe of the Port Madison Reservation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, Central Washington University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Central Washington University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11013 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035906; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Tennessee Department of Environment and Conservation, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Tennessee Department of Environment and Conservation (TDEC–DOA) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Madison, Obion, and Perry Counties, TN.

DATES: Repatriation of the cultural items in this notice may occur on or after June 23, 2023.

ADDRESSES: Phillip R. Hodge, Tennessee Department of Environment and Conservation, Division of Archaeology, 1216 Foster Avenue, Cole Building #3, Nashville, TN 37243, telephone (615) 626–2025, email *Phil.Hodge@tn.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the TDEC–DOA. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the TDEC–DOA.

Description

In 1963, 1981, and 1983, archeologists with the TDEC–DOA removed 68 cultural items from site 40MD1 in Madison County, TN. The 68 unassociated funerary object include 46 lots of fragmentary artifacts from burial fill consisting of copper, fiber matting, fibrous material, unidentified organic material, cane-impressed clay and daub, charcoal samples, burned wood, unidentified bones, lithic debitage, burned sandstone, siltstone, fire cracked rock, mica, faunal bones, and shells; 12 lots of fragmentary artifacts from features interpreted to be cremations consisting of lithic debitage, sandstone, quartz crystal flakes, mica, ceramic sherds, unidentifiable bones and charcoal; four lots consisting of lithic debitage, chipped stone tool fragments, sandstone, quartz crystal flakes, mica, ceramic sherds, unidentifiable bones, charcoal, and soil fragments with impressed cane matting; one lot consisting of burned sandstone; one lot consisting of pearl and shell beads from Mound 6; two lots of fragmentary artifacts from features interpreted to be cremations consisting of unidentifiable bone fragments and stone from Mound 12; one lot of fragmentary artifacts from burial fill consisting of lithic debitage, burned sandstone, and ceramic sherds; and one lot consisting of charcoal and burned organic material from a cremation feature in Mound 31.

In 1985, archeologists with Arrow Enterprises of Bowling Green, KY, working under contract to the U.S. Soil Conservation Service, removed 43 cultural items from site 40OB6 in Obion County, TN. The 43 unassociated funerary objects include eight lots of artifacts from burial fill consisting of lithic debitage, fire cracked rock, sandstone, shell fragments, ceramic sherds, burned clay fragments, and unidentifiable calcined bone fragments; 34 lots of artifacts from general mound fill consisting of lithic debitage, fire cracked rock, fragmentary chipped stone tools, sandstone, pebbles, ceramic sherds, burned clay fragments, charcoal, shells, and faunal bones; and one lot consisting of unprocessed soil samples from mound contexts.

Between 1972 and 1976, archeologists with then Memphis State University removed eight cultural items from site 40PY207 in Perry County, TN. The eight unassociated funerary objects include one lot consisting of commingled dog skeletal remains belonging to three dogs and seven lots of burial fill consisting of lithic debitage, fragmentary faunal materials, shells, fire cracked rock, daub, and stone.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the TDEC–DOA has determined that:

- The 119 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, the TDEC–DOA must determine the

most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The TDEC–DOA is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11011 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035910; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Appalachian State University, Boone, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Appalachian State University has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Watauga County, NC, and from an unknown site or sites in one or more of the following counties: Ashe County, NC; Avery County, NC; Caldwell County, NC; Watauga County, NC; Wilkes County, NC; Carter County, TN; and Johnson County, TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Dr. Alice Wright, Associate Professor, Appalachian State University, Department of Anthropology, ASU Box 32016, 322 Anne Belk Hall, Boone, NC 28608, telephone (828) 262–6384, email *wrightap2@appstate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Appalachian State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Appalachian State University.

Description

In the early 1970s, human remains representing, at minimum, one individual were removed from the Ward site in Watauga County, NC, by Appalachian State University archeologists under the direction of Harvard Ayers. The Ward site is a village that dates between A.D. 1100 and 1300. The grave containing these human remains was found outside the village palisade. These human remains—a complete but poorly preserved skeleton—probably belong to a young adult male. No known individual was identified. The one associated funerary object is a greenstone celt found in the grave fill.

In 1968, human remains representing, at minimum, one individual were removed from Church Rockshelter No. 1 in Watauga County, NC. They were excavated by the landowner, who had found them near the surface of the ground and in a flexed position. The stratigraphic placement of these human remains and their relatively good condition suggest they date to the late precontact period (A.D. 1300–1500). These human remains were in the possession of the Appalachian State University biology department before being transferred to the Department of Anthropology, in 1990. The human remains—a nearly complete skeleton—belong to a female approximately 20 years old. No known individual was identified. No associated funerary objects are present.

In 2003, human remains representing, at minimum, one individual were removed from Church Rockshelter No. 1 in Watauga County, NC. They were excavated by Appalachian State University archeologists under the direction of Thomas Whyte from the 1968 excavation spoil pile. The human remains were scattered. Evidently, they had not been seen or recognized as human during the 1968 excavation. The human remains—a partial skeleton—belong to an infant. The infant may have been associated with the adult female removed from Church Rockshelter No. 1 in 1968. No known individual was identified. No associated funerary objects are present.

Sometime during the mid-20th century, human remains representing, at minimum, three individuals were removed from an unknown site or sites in one or more of the following counties: Ashe County, NC; Avery County, NC; Caldwell County, NC; Watauga County, NC; Wilkes County, NC; Carter County, TN; and Johnson County, TN. They were acquired by a private collector, and probably were purchased from private collections deriving from these counties. In 1982, these human remains were donated to the Appalachian Cultural Museum of Appalachian State University. In 2006, when the Appalachian Cultural Museum closed, the human remains were transferred to the Appalachian State University Department of Anthropology. The human remains—partial skeletons—belong to three adults. No known individuals were identified. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, Appalachian State University has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- The one object described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 23, 2023. If competing requests for disposition are received, Appalachian State University must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Appalachian State University is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11015 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035911; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Lincoln National Forest, Alamogordo, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Lincoln National Forest (Lincoln National Forest) has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Pickett's Cave, Eddy County, NM.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Scott Hays-Strom, Lincoln National Forest, 3463 Las Palomas Road, Alamogordo, NM 88310, telephone (575) 434–7206, email *Scott.Hays-Strom@usda.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Lincoln National Forest. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Lincoln National Forest.

Description

Human remains representing, at minimum, one individual were removed from Lincoln National Forest, Eddie County, NM. These human remains were excavated under the direction of archeologist Edwin Nelson Ferdon, Jr. during the excavation of a cave by the University of Nebraska State Museum (UNSM) Vertebrate Paleontology Division led by C. Bertrand Shultz. The human remains were in the physical custody of Museum Director C. Bertrand Shultz until his death in 1995. In September of 1998, they were discovered in the office of the late Thomas Myers, UNSM Curator of Anthropology, and were immediately transferred to the UNSM NAGPRA Repository. Osteological examination determined that the human remains belong to a Native American young adult male over 18 years of age. A prehistoric date for these human remains is based on the pottery sherds found within the same cultural level in the excavation (Ferdon 23:1946). The 42 associated funerary objects are 17 woven fiber sandals, one basketry fragment, one black projectile point, one fragment of charcoal, 11 bags of fiber fragments belonging to woven sandals, one boxed lot of charcoal pieces, one boxed lot containing partial sandals and sandal fragments, one partial fiber sandal (labeled SR–6421), one boxed lot containing fiber fragments and a shell fragment, one piece of worked brown chert, one boxed lot of fiber sandal fragments, two faunal bone fragments, one piece of wood, one shell ornament with drilled holes, and one boxed lot containing two pieces of worked stone, faunal bones, a piece of charcoal, and strips of bark.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: final judgement of the Indian Claims Commission, treaties, Acts of Congress, and Executive Orders.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Lincoln National Forest has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 42 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Comanche Nation, Oklahoma; Hopi Tribe of Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 23, 2023. If competing requests for disposition are received, Lincoln

National Forest must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. Lincoln National Forest is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11016 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035913; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Warren County Cultural & Heritage Affairs, Shippen Manor Museum, Oxford, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Shippen Manor Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Warren County, NJ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Gina Rosseland, Warren County Cultural & Heritage Affairs, Shippen Manor Museum, 8 Belvidere Avenue, Oxford, NJ 07863, telephone (908) 453–4381.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Shippen Manor Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Shippen Manor Museum.

Description

In 1966, human remains representing, at minimum, one individual were found along the Delaware River in Pahaquarry, Warren County, NJ. Initially, these ancestral remains, together with associated funerary objects, were in the possession of White Township Historical Museum (Bridgeville, Warren County, NJ). Subsequently, they were brought to the Shippen Manor Museum by former curator Andrew Drysdale. The human remains belong to a juvenile male. No known individual was identified. The three associated funerary objects are one lot consisting of hammer stones, one lot consisting of rocks, and one lot consisting of arrowheads and/or flint.

Human remains representing, at minimum, one individual were found at the King Cole site (Dayton's Burial Site #1) in Belvidere, Warren County, NJ, during an archeological excavation and brought to the Shippen Manor Museum by F. Dayton Staats at an unknown date. The human remains consist of bone and teeth belonging to an adolescent male, No known individual was identified. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the King Cole site in Belvidere, Warren County, NJ, and placed at the Shippen Manor Museum by F. Dayton Staats at an unknown date. The human remains consist of skull belonging to a female of unidentified age. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Shippen Manor Museum has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The three lots of funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, the Shippen Manor Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Shippen Manor Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11018 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035907; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE), Harvard University has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Bradley, Davidson, Jackson, McMinn, and Sumner Counties, TN, and from unknown counties in TN.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

The following descriptions are organized, first, by collector and then, by year and county.

Frederic Ward Putnam's 1877 to 1879 PMAE Expeditions in Davidson and Sumner Counties, TN

All the human remains and associated funerary objects from Putnam's expeditions were accessioned by the PMAE in the year of collection.

In 1877, human remains representing, at minimum, 81 individuals were removed by Putnam from the Bowling Farm Site (state site number 40DV426) in Davidson County, TN. No known individuals were identified. The 146 associated funerary objects include 145 objects that are present at the PMAE and one object that is currently not located. The 145 present funerary objects are one ceramic ear spool; two stone ear spools; two perforated canine teeth; seven beaver teeth or tooth fragments; six faunal bone or bone fragments; 23 shell beads or bead fragments; one lot consisting of shell beads; five shells or shell fragments; one lot consisting of shells; three shell spoons; four stone chips and shell fragments; 10 bifaces or biface fragments/debitage; 11 bone awls; one lithic tool (perforator); one lot consisting of stone flakes and shell fragments; five stone flakes or debitage; three stones or stone fragments; two worked antler tools; one worked bone tool; one worked shell fragments and one soil concretion; seven worked shells or shell fragments; one ceramic pipe; one ceramic bottle; four ceramic bowls; one ceramic effigy bottle; eight ceramic jars; four ceramic vessels; two lot consisting of ceramic vessel sherds; and 26 ceramic vessel fragments or sherds. The one associated funerary object currently not located is one lot consisting of perforated shells.

In 1877, human remains representing, at minimum, one individual were removed by Putnam from the Brick Church Pike Mound (state site number 40DV39) in Davidson County, TN. No known individual was identified. The one associated funerary object, a small copper ornament, is not currently located.

In 1877, human remains representing, at minimum, two individuals were removed by Putnam from the Zollicoffer Fort Site (state site number 40DV32) in Davidson County, TN. No known individuals were identified. The three associated funerary objects are one lot consisting of ceramic sherds and antler fragments, one ceramic sherd, and one copper sheet ornament.

In 1877 and 1878, human remains representing, at minimum, five individuals were removed by Putnam from Overton's Farm, also known as the Traveller's Rest Site (state site number 40DV11), in Davidson County, TN. No known individuals were identified. The one associated funerary object is a ceramic bowl.

In 1879, human remains representing, at minimum, one individual were removed by Putnam from the Mr. Crockarell's Place, also known as Cockrill Bend (state site number 40DV35), in Davidson County, TN. No known individual was identified. No associated funerary objects are present.

In 1879, human remains representing, at minimum, one individual were removed by Putnam from a stone grave near Drake's Creek in Sumner County, TN. No known individual was identified. No associated funerary objects are present.

Edwin Curtiss's 1877–1879 PMAE Expeditions in Davidson, Jackson, and Sumner Counties, TN

Unless otherwise noted, all the human remains and associated funerary objects from Curtiss's expeditions were accessioned by the PMAE in the year of collection.

In 1877, human remains representing, at minimum, six individuals were removed by Curtiss from Clees Plantation in Davidson County, TN. No known individuals were identified. No associated funerary objects are present.

In 1877, human remains representing, at minimum, 14 individuals were removed by Curtiss from Wilkinson's Farm, also known as the Gordontown Site (state site number 40DV6), in Davidson County, TN. No known individuals were identified. The one associated funerary object is a ceramic bowl.

In 1878, human remains representing, at minimum, four individuals were removed by Curtiss from Marshall's Farm in Davidson County, TN, and were accessioned by the PMAE in 1879. No known individuals were identified. The 12 associated funerary objects are one ceramic jar, nine shell beads, and two fragments of shell spoons.

In 1878, human remains representing, at minimum, two individuals were removed by Curtiss from stone graves near Nashville in Davidson County, TN. The place of removal may have been Marshall's Farm. No known individuals were identified. No associated funerary objects are present.

In 1878, human remains representing, at minimum, seven individuals were removed by Curtiss from stone graves near the Cumberland River in either Davidson or Jackson County, TN. No known individuals were identified. No associated funerary objects are present.

In 1878, human remains representing, at minimum, 12 individuals were removed by Curtiss from Mr. Gower's Place in Davidson County, TN. No known individuals were identified. The 11 associated funerary objects are one ceramic bowl, one ceramic vessel, one shell, one ceramic sherd, one lot consisting of ceramic sherds, one faunal bone, one biface, and four fossilized shells.

In 1878, human remains representing, at minimum, 45 individuals were removed by Curtiss from Noel Cemetery, also known as Oscar Noel's Farm (state site number 40DV3), in Davidson County, TN. Locations within this site include Cain's Chapel and Cain's Field. No known individuals were identified. The 25 associated funerary objects include 22 objects that are present at the PMAE and three objects that are currently not located. The 22 present associated funerary objects are six ceramic bowls, two ceramic effigy vessels, two ceramic jars, one ceramic vessel, two pieces of debitage, one ground stone disk, six shell spoons, one stone bead, and one shell of unio. The three associated funerary objects currently not located are two bifaces and one lot consisting of shell spoons.

In 1878, human remains representing, at minimum, one individual were removed by Curtiss from a cave near the Cumberland River in Jackson County, TN. No known individual was identified. The eight associated funerary objects are eight faunal bones or bone fragments.

In 1878, human remains representing, at minimum, 23 individuals were removed by Curtiss from the Rutherford-Kizer site (state site number 40SU15) in Sumner County, TN, and were accessioned by the PMAE in 1879. No known individuals were identified. The 69 associated funerary objects include 68 objects that are present at the PMAE and one object that is currently not located. The 68 present associated funerary objects are 13 shells; one stone; five fragments of a copper-covered wooden button and a horn ornament; one bag of copper ornament fragments; one ceramic vessel; one discoidal stone; one faunal bone fragment; one grinding stone; one biface and one flake; two bifaces; one lot consisting of mica fragments; one lot consisting of shell, bone, and tooth fragments; one lot consisting of quartz, pebbles, and lithics; one shell; six shell gorgets; two smooth pebbles; 12 shell beads; 12 strands of beads; three crystals of galena and quartz; and one lot consisting of ceramic sherds. The one associated funerary object currently not located is one lot consisting of shell beads.

In 1879, human remains representing, at minimum, one individual were removed by Curtiss from Dr. Dosier's Place in Davidson County, TN. No known individual was identified. The one associated funerary object is a fossil crinoid stem.

John W. Emmert's 1890–1892 Expeditions in Bradley, McMinn, and unknown counties in TN

All human remains and associated funerary objects from Emmert's expeditions were received by the PMAE between 1890 and 1892. They were catalogued by the PMAE in 1969.

In 1890, human remains representing, at minimum, nine individuals were removed by Emmert from Ross Mound in Bradley County, TN, and were received by the PMAE in 1890. No known individuals were identified. The six associated funerary objects are six lithics.

Between 1890 and 1892, human remains representing, at minimum, three individuals were removed by Emmert from the Denton Mounds in Bradley County, TN, and were received by the PMAE in 1892. No known individuals were identified. The nine associated funerary objects are six bifaces, two discoidal stones, and one stone celt.

Between 1890 and 1892, human remains representing, at minimum, two individuals were removed by Emmert from the Hooper Mounds, also known as the Candy Creek site, in Bradley County, TN, and were received by the PMAE in 1892. No known individuals were identified. The 10 associated funerary objects are six ceramic fragments; two bags of ceramic sherds, bones, and beads; and two lots consisting of ceramic sherds.

Between 1890 and 1892, human remains representing, at minimum, three individuals were removed by Emmert from Perry Mound in Bradley County, TN, and were received by the PMAE in 1892. No known individuals were identified. The four associated funerary objects include three objects that are present at the PMAE and one object that is currently not located. The three present associated funerary objects are one bone bead, one shell bead, and one drilled bear tusk. The one associated funerary object currently not located is one shell bead.

Between 1890 and 1892, human remains representing, at minimum, 31 individuals were removed by Emmert from Hudson Mound in McMinn County, TN, and were received by the PMAE sometime between 1890 and 1892. No known individuals were identified. The three associated funerary objects are two stone celts and one copper axe.

Between 1890 and 1892, human remains representing, at minimum, one individual, were removed by Emmert from Marler Mound in McMinn County, TN, and were received by the PMAE in 1892. No known individual was identified. No associated funerary objects are present.

Between 1890 and 1892, human remains representing, at minimum, one individual were removed by Emmert from Ballew Mound in McMinn County, TN, and were received by the PMAE in 1892. No known individual was identified. The one associated funerary object is a large, drilled column of shell.

Between 1890 and 1892, human remains representing, at minimum, nine individuals were removed by Emmert from Forrest Mound 1 in McMinn County, TN, and were received by the PMAE in 1892. No known individuals were identified. The two associated funerary objects include one object that is present at the PMAE and one object that is not currently located. The one present associated funerary object is one lot consisting of stone fragments (likely pyrite). The one associated funerary object currently not located is a grooved ovaloid pipe.

Between 1890 and 1892, human remains representing, at minimum, one individual were removed by Emmert from McCroskey Mound in McMinn County, TN, and were received by the PMAE in 1892. No known individual was identified. The eight associated funerary objects are four projectile points, one quartz scraper, two charcoal pieces, and one ceramic bead.

Between 1890 and 1892, human remains representing, at minimum, two individuals, were removed by Emmert from Hyatt Mound, near Mouse Creek, in an unknown county in TN, and were received by the PMAE in 1890. Based on correspondence from Emmert, it is probable that the Hyatt Mound was in McMinn County. No known individuals were identified. No associated funerary objects are present.

Between 1890 and 1892, human remains representing, at minimum, three individuals were removed by Emmert from a site identified as Mound 2, in an unknown county in TN, and were received by the PMAE in 1890. Correspondence and field notes from Emmert indicate he was primarily excavating in Bradley, McMinn, Polk, Marion, and Meigs Counties, TN, in these years. No known individuals were identified. No associated funerary objects are present.

Between 1890 and 1892, human remains representing, at minimum, 85 individuals, were removed by Emmert from unidentified locations within TN, and were received by the PMAE. Correspondence and field notes from Emmert indicate he was primarily excavating in Bradley, McMinn, Polk, Marion, and Meigs Counties, TN, in

these years. No known individuals were identified. The five associated funerary objects are one ceramic sherd, two faunal bone fragments, one animal tooth, and one bone bead.

Additional Collectors in Davidson County, TN

At an unknown date, human remains representing, at minimum, one individual were removed by Mrs. J. M. Overton from Overton's Farm, also known as Traveller's Rest Site (state site number 40DV11), in Davidson County, TN. In 1877, Overton donated these human remains to the PMAE. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum one individual were removed by R. S. Robertson from the Zollicoffer Fort Site (state site number 40DV32) in Davidson County, TN. In 1877, Robertson donated these human remains to the PMAE. No known individual was identified. No associated funerary objects are present.

In 1877, human remains representing, at minimum, five individuals were removed by Horatio N. Rust from the Zollicoffer Fort Site (state site number 40DV32) in Davidson County, TN, and were donated to the PMAE. No known individuals were identified. The four associated funerary objects are one faunal bone and three boxes of ceramic sherds.

In 1884, human remains representing, at minimum, five individuals were removed by George Woods from Noel Cemetery, also known as Oscar Noel's Farm (state site number 40DV3), in Davidson County, TN, as part of a PMAE expedition led by Frederic Ward Putnam. No known individuals were identified. The 11 associated funerary objects are one ceramic effigy vessel, one container filled with shell beads, one ceramic jar, one shell bead, one shell spoon, one shell, and five bone implements or tools.

In 1955, human remains representing, at minimum, two individuals, were removed by Dr. L. Cabot Briggs from the Logan Site (state site number 40DV8) in Davidson County, TN, and were donated to the PMAE. This burial is also known as the ''Cheekwood Burial.'' No known individuals were identified. The one associated funerary object is one ceramic bowl.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission or the United States Court of Claims and treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 370 individuals of Native American ancestry.
- The 342 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after June 23, 2023. If competing requests for disposition are received, the PMAE must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11012 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035905; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Plymouth County, IA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after June 23, 2023.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Human remains representing, at minimum, 43 individuals were removed from the Broken Kettle Mill Creek Cemetery site (13PM1), in Plymouth County, IA. The burials were discovered in 1964, when the landowner, Donald Banks, found ancestral human remains

on the property. Banks contacted David Lilly of the Iowa Archaeological Society who excavated the site with Donald's brother, Roger Banks from September 6 to September 27, 1964. Following the excavation, these human remains were held by Banks. Correspondence on file at UTK indicates that they were likely transferred to William Bass in 1965, while he was at the University of Kansas (KU), and that Bass subsequently brought them to Knoxville in 1971, when he began working for the UTK Department of Anthropology. Radiocarbon dates submitted by D. R. Henning in 1969 indicate that Broken Kettle, 13PM1, was occupied between A.D. 960 and 1165. Broken Kettle is classified as part of the Mill Creek Phase/Culture. While Lilly and Banks did not explicitly date the cemetery, they did classify it as ''fairly definite'' Mill Creek, based on artifact types, and surmised the cemetery was even associated with the Broken Kettle site. Numerous dates obtained for Mill Creek Phase sites range from A.D. 810–1580; however, stratigraphic evidence has been used to posit a range of dates between A.D. 900–1400. The 12 associated funerary objects are six lots consisting of shells, four lots consisting of faunal remains, one lot consisting of lithics, and one lot consisting of rocks.

Human remains representing, at minimum, one individual were removed from the Kimball Mound site (13PM4) in Plymouth County, IA. These human remains are housed at UTK, but details concerning their removal and transfer to UTK are unknown. In 1939, Charles Keyes and Ellison Orr excavated the Kimball Mound site as Works Progress Administration (WPA) Project 3600, during which the burials of seven individuals were uncovered, and in 1963, Walter Klippel found a burial when he returned to the site with Dale Henning. Records at UTK indicate that in July of 1959, William Bass examined the ancestral remains of an individual from this site at the ''Little Bend Camp.'' Based on a pattern of practice, the human remains listed here were likely sent to Bass while he was at KU and then brought by him to Knoxville in 1971, when he began teaching at UTK. Alternatively, as Klippel also subsequently taught at UTK, it is possible that he effected the transfer to UTK.

All the above-described human remains have been identified as Native American based on documented association with ancient Native American sites classified as Mill Creek culture. Based on artifact type, site location, and mortuary practice, the Broken Kettle Mound and Kimball mounds were classified as part of the Mill Creek Culture. Numerous dates obtained for Mill Creek Phase sites range from A.D. 810–1580; however, stratigraphic evidence has been used to posit a range of dates between A.D. 900–1400. No associated funerary objects are present.

Mill Creek manifestations are grouped within the Initial variant of the Middle Missouri Tradition. Archeological and ethnohistorical evidence links later Middle Missouri groups with the Mandan and Hidatsa, who are present-day members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The human remains described in this notice represent the physical remains of 44 individuals of Native American ancestry.
- The 12 lots of objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after June 23, 2023. If competing requests for repatriation are received, UTK must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: May 17, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–11010 Filed 5–23–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Semiannual Suitability Request—ATF Form 3252.8

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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 24, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at

Renee.Reid@atf.gov, or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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: Any individual currently serving a confidential informant (CI) for ATF must provide their personally identifiable information. ATF will utilize the information to verify the identity of the individual.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* Semiannual Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 3252.8. 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:* Individuals or households. The obligation to respond is mandatory.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 800 respondents will provide information to complete this form 2 times annually, and it will take approximately 120 minutes or (2 hours) to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 3,200 hours, which is equal to 800 (total respondents) * 2 (# of responses per respondent) * 2 (120 min.).

7. *An estimate of the total annual cost burden associated with the collection:* $0.

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
ATF Form 3252.8	800	2	1,600	2	3,200

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 18, 2023.

John Carlson,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2023–11088 Filed 5–23–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0103]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; FBI Whistleblower Request for Corrective Action Form

AGENCY: Office of Attorney Recruitment and Management, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management, 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 24, 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 Rena J. Cervoni, Office of Attorney Recruitment and Management, 450 5th St. NW, Suite 10200, 202–514–6429, *Rena.J.Cervoni@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: Extension of the previously approved Request for Corrective Action Form collection.

The Request for Corrective Action Form is voluntarily submitted by individuals who are current or former employees of, or applicants for employment with, the FBI who allege reprisal for their whistleblowing activities.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Request for Corrective Action Form:

REQUEST FOR CORRECTIVE ACTION FORM (*justice.gov*).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number/Office of Attorney Recruitment and Management Justice Management Division, 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: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An average of 15 respondents per year, and an average of three hours to complete to respond.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is approximately 45 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* Not applicable/$0.

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Request for Corrective Action Form	15	1/annually	15	3	45
Unduplicated Totals	*15*		*15*		*45*

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 18, 2023.

John Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–11090 Filed 5–23–23; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

[OMB 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Long-Term Suitability Request—ATF Form 3252.13

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit 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 24, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Renee Reid, FO/ESB—Mailstop (7.E–401), either by mail at 99 New York Ave. NE, Washington, DC 20226, by email at *Renee.Reid@atf.gov,* or by telephone at 202–648–9255.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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: Any individual currently serving a confidential informant (CI) for ATF must provide their personally identifiable information. ATF will utilize the information to verify the identity of the individual. Respondents include members of the public who are presently serving as a CI for ATF.

Overview of This Information Collection

1. *Type of Information Collection:* New Collection.

2. *The Title of the Form/Collection:* Long-Term Suitability Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 3252.13.

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: Individuals or households. Obligation to respond is mandatory.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 40 respondents will provide information to complete this form once annually, and it will take approximately 180 minutes or (3 hours) to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 120 hours, which is equal to 40 (total respondents) * 1 (# of responses per respondent) * 3 (180 minutes or the time taken to prepare each response).

7. *An estimate of the total annual cost burden associated with the collection:* $0.

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
ATF Form 3252.13	40	1/annually	40	3 hrs	120

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 18, 2023.

John Carlson,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2023–11089 Filed 5–23–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 17, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States* v. *BP Products North America,* Case No. 2:23–cv–166.

The Complaint alleges that Defendant violated the National Air Emission Standards for Hazardous Air Pollutants for benzene waste operations, and the New Source Performance Standards for VOC emissions from refinery wastewater systems, as well as the general requirement to use good air pollution control practices at its refinery in Whiting, Indiana. The proposed Consent Decree resolves these claims and requires the Defendant to perform injunctive relief, including the installation of a permanent benzene stripper. Defendant will also spend $5 million to implement a supplemental environmental project intended to reduce diesel emissions in the surrounding communities. Defendant will pay a total financial penalty of $40 million, comprised of a $31,424,000 civil penalty and $8,576,000 in stipulated penalties for violations of an earlier consent decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *BP Products North America,* D.J. Ref. No. 90–5–2–1–09244/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $42 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $22.

Susan M. Akers,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023–11042 Filed 5–23–23; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Slope and Shaft Sinking Plans, 30 CFR 77.1900 (Pertains to the Surface Work Areas of Underground Coal Mines)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 23, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Title 30 CFR 77.1900 requires underground coal mine operators to submit for approval a plan that will provide for the safety of workmen in each slope or shaft that is commenced or extended from the surface to the underground coal mine. Each slope or shaft sinking operation is unique in that each operator uses different methods and equipment and encounters different geological strata which make it impossible for a single set of regulations to ensure the safety of the miners under all circumstances. This makes an individual slope or shaft sinking plan necessary. The plan must be consistent with prudent engineering design. Plans include the name and location of the mine; name and address of the mine

operator; a description of the construction work and methods to be used in construction of the slope or shaft, and whether all or part of the work will be performed by a contractor; the elevation, depth and dimensions of the slope or shaft; the location and elevation of the coalbed; the general characteristics of the strata through which the slope or shaft will be developed; the type of equipment which the operator proposes to use; the system of ventilation to be used; and safeguards for the prevention of caving during excavation. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 24, 2022 (87 FR 64254).

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–MSHA.

Title of Collection: Slope and Shaft Sinking Plans, 30 CFR 77.1900 (Pertains to the Surface Work Areas of Underground Coal Mines).

OMB Control Number: 1219–0019.

Affected Public: Businesses or other for-profits institutions.

Total Estimated Number of Respondents: 24.

Total Estimated Number of Responses: 55.

Total Estimated Annual Time Burden: 1,100 hours.

Total Estimated Annual Other Costs Burden: $35.

(Authority: 44 U.S.C. 3507(a)(1)(D).)

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2023–10984 Filed 5–23–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 23, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2023–0022 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2023–0022.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2023–013–C.

Petitioner: Mach Mining, LLC, P.O. Box 300, Johnston City, IL 62951.

Mine: Mach #1 Mine, MSHA ID No. 11–03141, located in Williamson County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6), Nonpermissible diesel-powered equipment; design and performance requirements.

Modification Request: The petitioner requests a modification of 30 CFR 75.1909(b)(6) to permit operation of the Getman grader No. RDG–1504C, serial No. 6941, without front brakes.

The petitioner states that:

(a) Road conditions in a coal mine can become very rough to travel on and can pose a serious hazard which exposes miners to an array of injuries. The mine roadways are watered each day to keep dust from being suspended and multiple trailers and equipment travel to and from the working sections, leaving the roadways with ruts and irregularities.

(b) If a mine emergency occurs, well-maintained roadways allow for safer operation of mobile equipment used to evacuate the mine ensuring quicker escape of miners.

(c) If a miner is injured including being transported on a back brace, well-maintained roadways ensure the injured miner does not receive further injury during the ride out of the mine.

(d) The grader may also be used to pull equipment from place to place throughout the mine, if necessary.

(e) The addition of front brakes to the road grader could cause a loss of control if one of the brakes would lock up during operation. Furthermore, the size, weight, and location of the front brakes would put repair personnel in positions that could subject them to injury.

(f) The grader is currently located on the mine surface and is available for inspection by MSHA.

The petitioner proposes the following alternative method:

(a) The Getman grader No. RDG–1504C, serial No. 6941 (grader), is and

will be maintained with 12.00 × 20.00 tires that will limit the speed of the grader to 10 miles per hour. All grader operators will be trained to lower the moldboard in emergency situations and before exiting the operator's compartment.

(b) All grader operators will be trained to recognize appropriate levels of speed for the different road conditions.

The grader will not travel up or down the mine slope unassisted. If the grader is taken out of the mine, an additional piece of equipment with adequate braking capacity will be used to assist removing the grader from the mine and take it back into the mine, via the mine slope.

(c) Within 60 days after this Proposed Decision and Order (PDO) becomes final, the petitioner will submit a proposed revision for its approved part 48 training plan to the Mine Safety and Health Enforcement District Manager. The PDO will be covered in all task training for every employee that will be operating the grader and will be included in the mine's annual refresher training. The mine's management team and workforce will also be trained on the PDO.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2023–10986 Filed 5–23–23; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

Preparations for the 44th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that OSHA will conduct a hybrid public meeting on June 21, 2023, in advance of the 44th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as an in-person meeting July 10–12, 2023, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

DATES: The hybrid public meeting will take place on June 21, 2023. Specific information for the joint meeting will be posted when available on the OSHA website at *https://www.osha.gov/hazcom/international#meeting-notice.*

ADDRESSES: This meeting will be a hybrid meeting, meaning it will be held virtually and in person at the Department of Transportation (DOT) Headquarters Conference Center, 1200 New Jersey Avenue SE, Washington, DC 20590. The meeting will be held in the Oklahoma Room.

Written Comments: Interested parties may submit comments July 2, 2023, on the Working and Informal Papers for the 44th session of the UNSCEGHS to the docket established for International/Globally Harmonized System (GHS) efforts at: *http://www.regulations.gov,* Docket No. OSHA–2016–0005.

Registration to Attend and/or to Participate in the Public Meeting: The OSHA and PHMSA sessions will be open to the public on a first-come, first-served basis, as space is limited.

If you are going to attend in person you must register with DOT PHMSA. There will be a remote participation option. Please register for the meeting here: *https://www.surveymonkey.com/r/G5KBH9J.*

PHMSA's meeting will be held in person and virtually from the DOT Headquarters, West Building, Conference Center, 1200 New Jersey Avenue SE, Washington, DC in the Oklahoma Conference Room; 9:00 a.m.–12:00 p.m., ET.

TDG Remote Option, *https://www.phmsa.dot.gov/international-program/international-program-overview* or call in (audio only) at 509–931–1572, Phone Conference ID: 636 183 458#.

OSHA's meeting will be held in person and virtually from the DOT Headquarters, West Building, Conference Center, 1200 New Jersey Avenue SE, Washington, DC in the Oklahoma Conference Room; 1:00 p.m.–4:00 p.m., ET. GHS Remote Option, *https://www.phmsa.dot.gov/international-program/international-program-overview* or call in (audio only) 509–931–1572; Phone Conference ID: 611 167 51#.

Advanced meeting registration information will be posted on the PHMSA website listed below. DOT is committed to providing equal access to this meeting for all participants. If you need interpretation or alternative formats or services because of a disability, such as sign language or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Attendees may use the same form to pre-register for both sessions of the meeting. Failure to pre-register may delay your access into the DOT Headquarters conference call line. Conference call-in and ''Teams meeting'' capability will be provided for both meetings. Information on how to access the conference call and ''Teams meeting'' will be posted when available at: *https://www.phmsa.dot.gov/international-program/international-program-overview* under Upcoming Events. This information will also be posted on OSHA's Hazard Communication website on the international tab at: *https://www.osha.gov/hazcom/international#meeting-notice.*

FOR FURTHER INFORMATION CONTACT: *At the Department of Transportation:* Please contact Mr. Steven Webb or Mr. Aaron Wiener, Office of Hazardous Materials Safety, Department of Transportation, telephone: (202) 366–8553.

At the Department of Labor: Please contact Ms. Janet Carter, OSHA Directorate of Standards and Guidance, Department of Labor, telephone: (202) 693–2370, email *carter.janet@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA will conduct a hybrid (in-person and virtual) public meeting on June 21, 2023, to discuss proposals in preparation for the 44th session of the UNSCEGHS to be held as an in-person meeting July 10–12, 2023, in Geneva, Switzerland. The June 21st public meeting will occur jointly with the DOT PHMSA to discuss proposals in preparation for the 62nd session of the UNSCETDG to be held as an in-person meeting July 3–7, 2023. Advanced meeting registration information for each session will be posted on the PHMSA and OSHA websites.

For each of these meetings, OSHA and PHMSA will solicit public input on U.S. government positions regarding proposals submitted by member countries in advance of each meeting.

The OSHA Meeting

OSHA is hosting an open informal public meeting in advance of the 44th session of the UNSCEGHS which will

represent the first meeting scheduled for the 2023–2024 biennium. Information on the work of the UNSCEGHS, including meeting agendas, working and informal papers, reports, and documents from previous sessions can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division website located at: *http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html.*

The PHMSA Meeting

Additional information regarding the UNSCETDG and related matters can be found on PHMSA's website at: *https://www.phmsa.dot.gov/international-program/international-program-overview.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 1–2012 (77 FR 3912), (Jan. 25, 2012).

Signed at Washington, DC, on May 17, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–10983 Filed 5–23–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Applications for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of Intertek Testing Services NA, Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications. Additionally, OSHA proposes to add one test standard to the NRTL Program's List of Appropriate Test Standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before June 8, 2023.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before June 8, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2300 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for expansion of the current recognition as a NRTL. ITSNA requests the addition of eighteen test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA currently has thirteen facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at *https://www.osha.gov/*

nationally-recognized-testing-laboratory-program/its.

II. General Background on the Application

ITSNA submitted two applications, one dated October 31, 2018 (OSHA–2007–0039–0040), requesting the addition of twenty-three test standards to the NRTL scope of recognition and a second application, dated April 24, 2020 (OSHA–2007–0039–0041), requesting the addition of seven test standards to the NRTL scope of recognition. The first application was amended on April 5, 2023, to remove five standards from the original request (OSHA–2007–0039–0042). The second application was amended on December 9, 2022, to remove four standards from the original request (OSHA–2007–0039–0043). The first application was revised again on May 10, 2023, to remove three standards from the original application (OSHA–2007–0039–0045). This notice covers the remaining eighteen test standards across both applications. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1, below, lists the appropriate test standards found in ITSNA's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 283	Air Fresheners and Deodorizers.
UL 1340	Hoists.
UL 1598C	Standard for Light Emitting Diode (LED) Retrofit Luminaire Conversion Kits.
UL 2208	Solvent Distillation Units.
UL 3730 *	Standard for Photovoltaic Junction Boxes.
UL 4703	Standard for Photovoltaic Wire.
UL 60335–2–40	Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers.
UL 60079–25	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079–28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079–31	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure "t".
UL 60730–1	Automatic Electrical Controls—Part 1: General Requirements.
UL 60730–2–5	Automatic Electrical Controls for Household and Similar Use—Part 2–5: Particular Requirements for Laboratory Equipment for the Automatic Electrical Burner Control Systems.
UL 61010–2–081	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–081: Particular Requirements for Automatic and Semi-Automatic Laboratory Equipment for Analysis and Other Purposes.
UL 61010–2–091	Standard for Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–091: Particular Requirements for Cabinet X-Ray Systems.
UL 61010–2–101	Safety Requirements for Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–101: Particular Requirements for In Vitro Diagnostic (IVD) Medical Equipment.
UL 2054	Standard for Household and Commercial Batteries.
UL 60730–2–8	Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves, Including Mechanical Requirements.
UL 62841–1	Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery—Safety—Part 1: General Requirements.

* Represents the standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards

III. Proposal To Add New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to: (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add one new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA preliminarily determined that this test standard is an appropriate test standard and proposes to include it in the NRTL Program's List of Appropriate Test Standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—TEST STANDARD OSHA PROPOSES TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 3730	Standard for Photovoltaic Junction Boxes.

IV. Preliminary Findings on the Applications

ITSNA submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that ITSNA can meet the requirements prescribed by

29 CFR 1910.7 for expanding the recognition to include the addition of these eighteen test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of ITSNA's applications.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0039 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant ITSNA's applications for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on May 17, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–10985 Filed 5–23–23; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–056]

NASA Planetary Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary 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, June 21, 2023, 10:00 a.m. to 6:00 p.m.; Thursday, June 22, 2023, 10:00 a.m. to 6:00 p.m.; and Friday, June 23, 2023, 10:00 a.m. to 1:45 p.m. All times are Eastern Time.

ADDRESSES: NASA Headquarters, Room 3D42, 300 E Street SW, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and via WebEx.

For Wednesday, June 21, 2023, the WebEx information for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m41bc7791ebe2e16d1d484ed2ec96910b.* The Webinar number is: 2764 988 8687 and the Webinar password is: PAC-062123 (72200622 from phones and video systems). To join by telephone call, use US Toll: +1–415–527–5035 (Access Code: 276 498 88687).

For Thursday, June 22, 2023, the WebEx information for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m5a295da1e9be7b90e72081dcf4f01e5c.* The Webinar number is: 2761 475 7043 and the Webinar password is: PAC-062223 (72200623 from phones and video systems). To join by telephone call, use US Toll: +1–415–527–5035 (Access Code: 276 147 57043).

For Friday, June 23, 2023, the WebEx information for attendees is: *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m78620ea3afb3dc3530ed019526f43966.* The Webinar number is: 2760 051 3284 and the Webinar password is: PAC-062323 (72200624 from phones and video systems). Toj join by telephone call, use US Toll: +1–415–527–5035 (Access Code: 276 005 13284).

Accessibility: Captioning will be provided for this meeting. We are committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations, please contact Ms. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355 or *karshelia.kinard@nasa.gov.*

The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Planetary Science Division Research and Analysis Program Update
—Mars Sample Return Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2023–11045 Filed 5–23–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Workshop on U.S. Leadership in Software Engineering & Artificial Intelligence Engineering: Critical Needs & Priorities

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF).

ACTION: Notice of workshop.

SUMMARY: Software is vital to America's global competitiveness, innovation, and national security. The economy, the nation's infrastructure, education, and healthcare all depend on software. Through AI engineering, the U.S. has made significant strides in healthcare, energy, transportation, and space exploration. Software engineering and AI underpin the industries that have

created huge economic benefits for the country. This workshop will explore the fundamental research needed to support progress across these critical domains.

DATES: June 20–21, 2023.

ADDRESSES: The workshop on U.S. Leadership in Software Engineering & AI Engineering: Critical Needs & Priorities will take place on June 20 and 21, from 9:30 a.m. to 5:00 p.m. (ET), at the National Science Foundation, 2415 Eisenhower Ave, Alexandria, VA 22314.

Instructions: Due to space limitations, in-person attendance is by invitation only; remote participation will be available via Zoom. The agenda, registration link, and Zoom information will be available the week of the event at: *https://resources.sei.cmu.edu/news-events/events/leadership-sw-ai/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Melissa Cornelius at (202) 459–9674 or email, *SPSQWorkshop2023@nitrd.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Closed Caption provided through Zoom.

SUPPLEMENTARY INFORMATION:

Overview. This notice is issued on behalf of the NITRD Software Productivity, Sustainability, and Quality (SPSQ) Interagency Working Group (IWG). The NITRD SPSQ IWG and Carnegie Mellon University (CMU) Software Engineering Institute (SEI) are partnering on this workshop to inform a community strategy for building and maintaining U.S. leadership in software engineering and AI engineering, and positively impact progress in multiple application domains. AI Engineering is a field of research and practice that combines the principles of software engineering, systems engineering, computer science, and human-centered design to enable implementation of AI systems in accordance with human needs for mission outcomes. Software engineering is a field of study and practice that focuses on designing, developing, testing, and maintaining software systems. It encompasses a systematic approach to building high-quality software that meets user requirements, is reliable, scalable, and maintainable.

Workshop goals are to:

- Identify research questions that excite the computing community and spark new collaborations.
- Identify addendums or updates to the National Agenda for Software Engineering roadmap.
- Produce a report summarizing challenges and strategic priorities for building and maintaining U.S. leadership in software engineering & AI engineering for the advanced computing and software community.

Workshop Objective. The workshop will provide an opportunity for discussions on research areas for the future of software engineering that are critical for multidisciplinary research. Several Federal agencies, as well as researchers and companies are working to chart the solution space. Federal leaders with an interest in software and AI engineering, research funding agencies, research laboratories, mission agencies, and commercial organizations with relevant experience and best practices should attend.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO) on May 19, 2023.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023–11076 Filed 5–23–23; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–161 and CP2023–165]

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 26, 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 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–161 and CP2023–165; *Filing Title:* USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 22 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 18, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:*

[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).

Christopher C. Mohr; *Comments Due:* May 26, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–11019 Filed 5–23–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97525; File No. SR–OCC–2023–003]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change by The Options Clearing Corporation Concerning Clearing Member Cybersecurity Obligations

May 18, 2023.

On March 21, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–003 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend certain provisions in OCC's Rules relating to Clearing Member cybersecurity obligations to address the occurrence of a cyber-related disruption or intrusion of a Clearing Member (''Security Incident''). The proposed rule change was published for public comment in the **Federal Register** on April 5, 2023.[3] The Commission has received two comments regarding the proposal described in the proposed rule change.

Section 19(b)(2) of the Exchange Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the Notice of Filing is May 20, 2023. The Commission is extending this 45-day time period.

In order to provide the Commission with sufficient time to consider the proposed rule change, the Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[5] designates July 4, 2023 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–OCC–2023–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–10988 Filed 5–23–23; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 97225 (Mar. 30, 2023), 88 FR 20195 (Apr. 5, 2023) (File No. SR–OCC–2023–003) (''Notice of Filing'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

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 Small Business Capital Formation Advisory Committee will hold a public meeting on Wednesday, June 14, 2023, at the Commission's headquarters and via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and at the Commission's headquarters, 100 F Street NE, Washington, DC 20549, in Multi-Purpose Room LL–006. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov*.

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Also, the meeting will be webcast on the Commission's website at *www.sec.gov*. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTER TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

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 22, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–11185 Filed 5–22–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97530]

Order Granting Temporary Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 608(e) of Regulation NMS Under the Exchange Act, From Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction and Background

In July 2012, the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') adopted Rule 613 of Regulation NMS, which required national securities exchanges and national securities associations (the ''Participants'') [1] to jointly develop and submit to the Commission a national market system plan to create, implement, and maintain a consolidated audit trail (the ''CAT'').[2] The goal of Rule 613 was to create a modernized audit trail system that would provide regulators with timely access to a comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities. On November 15, 2016, the Commission approved the national market system plan required by Rule 613 (the ''CAT NMS Plan'').[3]

[1] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[2] *See* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) (''Rule 613 Adopting Release'').

[3] Securities Exchange Act Release No. 78318 (Nov. 15, 2016), 81 FR 84696, (Nov. 23, 2016)

Continued

To provide the Participants with more time to meet certain requirements of the CAT NMS Plan and thereby allow the Participants to prioritize and focus resources on meeting other implementation goals, the Commission issued two exemptive orders on December 16, 2020 (collectively, the ''2020 Orders''). In the first order, in response to a request from the Participants, the Commission granted temporary conditional relief from certain performance requirements related to the online targeted query tool.[4] The second order granted temporary conditional relief from the following requirements: (1) requirements for lifecycle linkages timeframes; (2) requirements for re-processing of corrected data received after T+5; (3) linkage requirements for Securities Information Processor data; (4) reporting requirements for port-level settings; (5) requirements for lifecycle linkages between customer orders and ''representative'' orders; and (6) requirements for Participant reporting of rejected orders.[5] Although the Participants did not request the relief granted in the second order, the Commission believed that granting such relief was necessary in order to ''provide Participants the time to develop the necessary technological, system or procedural changes to meet the CAT NMS Plan requirements'' addressed in that order.[6]

On February 14, 2021, a subset of the Participants filed motions requesting that the Commission stay the 2020 Orders, based on their concern that portions of the 2020 Orders ''interpret and apply the Plan in ways that will produce unintended adverse consequences, present implementation challenges, or both.'' [7] Corresponding petitions for judicial review were also filed with the D.C. Circuit by a smaller subset of the Participants.[8] In their motions to stay and supporting materials, the Participants urged the Commission to consider their ''arguments and supporting evidence and to reevaluate whether the [2020] Order[s] [were] appropriate in light of that information.'' [9] Alternatively, the Participants requested that the Commission stay portions of the 2020 Orders pending resolution of the petitions for judicial review.[10] On January 12, 2022, the Participants further requested that the Commission supplement the record to include certain additional materials.[11] The Commission granted this request.

After careful review of the arguments and evidence proffered by the Participants, the Commission issued a new exemptive relief order on July 8, 2022.[12] The 2022 Order clarified certain aspects of the 2020 Orders, modified other aspects of the 2020 Orders in light of subsequent developments and/or additional information provided by the Participants, and provided the Participants with additional time either to come into compliance with the relevant provisions of the CAT NMS Plan or to develop alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner. Specifically, the 2022 Order granted temporary exemptive relief from the same requirements addressed in the 2020 Orders until July 31, 2024, and set forth new conditions with which the Participants were required to comply in order to qualify for that exemptive relief.[13] In granting this temporary conditional exemptive relief, the Commission emphasized its willingness to consider alternative regulatory solutions in the form of a proposed CAT NMS Plan amendment or a request for permanent exemptive relief.[14]

On the same day that it issued the 2022 Order, the Commission denied the Participants' pending motions to stay the 2020 Orders as moot.[15] With respect to the pending petitions for judicial review of the 2020 Orders, the Commission and the Participants submitted a joint stipulation of voluntary dismissal to the D.C. Circuit on August 5, 2022,[16] and the court dismissed those petitions for judicial review.[17] On September 6, 2022, in order to reserve their rights, a subset of the Participants filed a new petition for judicial review of the 2022 Order with the D.C. Circuit.[18] On October 3, 2022, the D.C. Circuit granted the parties' joint motion to hold the case in abeyance while the parties pursue settlement discussions.[19] On March 29, 2023, the D.C. Circuit granted the parties' joint motion to govern future proceedings and lifted the abeyance.[20]

In the months following the issuance of the 2022 Order, the Participants and Commission staff have continued to engage in discussions with the goal of resolving or narrowing their differences with respect to the issues addressed in that order. On April 12, 2023, the Participants requested that the Commission extend the relief granted in the 2022 Order from July 31, 2024 to January 31, 2025, in order to facilitate further settlement discussions between the Participants and Commission staff.[21] The Participants stated their belief that a six-month extension of the compliance deadline set forth in the 2022 Order

(''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT (the ''Company''). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on Aug. 29, 2019, which they designated as effective on filing. Under the amendment, the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC serves as the CAT NMS Plan, replacing in its entirety the CAT NMS Plan. *See* Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

[4] *See* Securities Exchange Act Release No. 90689 (Dec.16, 2020), 85 FR 83667 (Dec. 22, 2020); *see also* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Dec. 1, 2020, *available at https://catnmsplan.com/sites/default/files/2020-12/12.01.20-CAT-Exemption-Request-OTQT.pdf* (''Participant Letter'').

[5] *See* Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

[6] *Id.* at 83634.

[7] *See* Motion for Partial Stay of Order 34–90689, at 2 (''First Motion''); Motion for Partial Stay of Order 34–90688, at 2 (''Second Motion''). Financial Industry Regulatory Authority, Inc. and Long-Term Stock Exchange, Inc. did not join these motions.

[8] *See* Petition for Review, USCA Case No. 21–1065; Petition for Review, USCA Case No. 21–1066. Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, and MIAX PEARL, LLC did not join these petitions.

[9] First Motion, *supra* note 7, at 2; Second Motion, *supra* note 7, at 2.

[10] First Motion, *supra* note 7, at 2; Second Motion, *supra* note 7, at 2.

[11] *See* Letter from K. King, Counsel for Consolidated Audit Trail, LLC, Covington & Burling LLP, to Vanessa Countryman, Secretary, Commission (Jan. 12, 2022).

[12] *See* Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022) (the ''2022 Order''). The Commission stated that the 2022 Order superseded the 2020 Orders. As of July 8, 2022, the terms of the 2022 Order governed, and the terms of the 2020 Orders were no longer in force. *Id.* at 42248.

[13] *See* 2022 Order, *supra* note 12.

[14] *See, e.g., id.* at 42248.

[15] *See* Securities Exchange Act Release No. 95231 (July 8, 2022), 87 FR 42242 (July 14, 2022).

[16] *See* Stipulation of Voluntary Dismissal, USCA Case Nos. 21–1065, 21–1066.

[17] *See* Order Granting Dismissal (Aug. 5, 2022), USCA Case Nos. 21–1065, 21–1066.

[18] *See* Petition for Review, USCA Case No. 22–1234. Financial Industry Regulatory Authority, Inc. and Investors' Exchange LLC did not join this petition.

[19] *See* Order Granting Joint Motion to Hold Appeal in Abeyance, USCA Case No. 22–1234.

[20] *See* Order Returning Case to Court's Active Docket and Setting Briefing Schedule, USCA Case No. 22–1234.

[21] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Apr. 12, 2023), *available at https://catnmsplan.com/sites/default/files/2023-04/04.12.23-July-8-Order-Extension-Request.pdf* (''Participant Letter''), at 2.

would ''provide the parties with adequate time to conclude their settlement negotiations and allow the Commission time to consider any resulting [CAT NMS] Plan amendments or exemptive relief.'' [22] The Participants further stated that, if the Commission granted the requested extension of exemptive relief, they would agree to ''promptly seek an abeyance of the litigation for an appropriate length of time in light of the duration of the extension, the status of settlement negotiations, and related considerations.'' [23]

For the reasons set forth below, this order (the ''Order'') grants the Participants' request for an extension of the temporary exemptive relief that was provided by the 2022 Order, subject to the same conditions set forth for that relief in the 2022 Order.[24]

II. Discussion and Exemptive Relief

Section 36 of the Exchange Act grants the Commission the authority to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [25] Rule 608(e) of Regulation NMS similarly grants the Commission the authority to ''exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.'' [26]

The Commission has determined that an extension of the exemptive relief provided in the 2022 Order, subject to the same conditions set forth in that order, is appropriate in the public interest and consistent with the protection of investors under section 36 of the Exchange Act, as well as consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system under Rule 608(e).

The Commission approved the CAT NMS Plan to help to protect investors and maintain fair and orderly markets by providing a sophisticated audit trail that improves regulators' ability to investigate potential misconduct, to reconstruct and to analyze market events, and to support regulatory decisions with detailed and accurate data, among other benefits. To realize this full spectrum of regulatory benefits, however, the CAT must be implemented in a manner that achieves the regulatory goals of Rule 613 and the CAT NMS Plan. To the extent that Participants seek to implement alternative solutions that deviate from the CAT NMS Plan requirements, they must first obtain Commission approval of either an amendment to the CAT NMS Plan or permanent exemptive relief.

The Commission's intention in issuing the 2022 Order, the substance of which is incorporated by reference herein, was to provide the Participants with additional time either to come into compliance with the requirements of the CAT NMS Plan or to develop and obtain Commission approval of alternative solutions that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner,[27] subject to certain conditions generally intended to preserve existing functionality as a baseline and/or give the Commission information about the performance of the CAT and the impact of any changes or improvements made by the Participants. Some conditions attached to the relief provided in the 2022 Order were also designed to ensure that the parties remained on track to resolve these issues in a timely fashion.[28]

As noted above, the Participants and Commission staff have continued to engage in discussions with the goal of reaching agreement on long-term solutions to the issues addressed in the 2022 Order that achieve the regulatory goals of Rule 613 and the CAT NMS Plan in a more cost-effective manner. The Commission agrees with the Participants that ''significant progress is being made'' in these ongoing settlement discussions [29] and believes that a six-month extension will provide additional time for the discussions to conclude and for the Commission to consider any resulting proposed CAT NMS Plan amendments or requests for exemptive relief. The Commission also believes that such an extension will increase the likelihood of timely agreement on and implementation of such long-term solutions, thus furthering the public interest, the protection of investors, the maintenance of fair and orderly markets, and the perfection of the mechanisms of a national market system.

III. Conclusion

Accordingly, *it is hereby ordered*, pursuant to section 36(a)(1) of the Exchange Act [30] and Rule 608(e) under the Exchange Act,[31] that the exemptive relief granted in the 2022 Order be extended to January 31, 2025, subject to the same conditions set forth in that order.

By the Commission.

Dated: May 19, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–11031 Filed 5–23–23; 8:45 am]

BILLING CODE 8011–01–P

[22] *See id.* at 2.

[23] *See id.*

[24] In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that the Participants may recover from Industry Members if the Participants fail to meet the target deadlines. *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020). The Commission believes it is most appropriate to consider whether the Participants have met the target deadlines established for each Financial Accountability Milestone in connection with proposals related to the imposition of CAT fees on broker-dealers. For that reason, in issuing this Order, the Commission makes no determinations regarding the Participants' compliance or non-compliance with the conditions set forth in the prior orders or the potential impact of such compliance or non-compliance on the Participants' ability to meet the Financial Accountability Milestones set forth in Section 1.1 of the CAT NMS Plan or the potential application of fee reduction provisions set forth in Section 11.6 of the CAT NMS Plan. Rather, the Commission will consider the Participants' compliance with the CAT NMS Plan requirements, and/or compliance with the conditions set forth in the prior orders and the impact of that compliance, in the context of such fee proposals. Moreover, the Commission makes no determinations regarding the Participants' compliance or non-compliance with other provisions or requirements of the CAT NMS Plan that are not discussed in the prior orders or in this Order.

[25] 15 U.S.C. 78mm(a)(1).

[26] 17 CFR 242.608(e).

[27] *See* 2022 Order, *supra* note 12, at 42248.

[28] For example, the Commission required the Participants and the Plan Processor to meet with Commission staff on at least a monthly basis to provide a detailed status update regarding each requirement at issue in the litigation and to promptly respond to related requests for additional information or data, in order to ''ensure that the Participants remain on track either to come into compliance with the requirements of the CAT NMS Plan or obtain the Commission's approval of an alternative solution by July 31, 2024.'' *See* 2022 Order, *supra* note 12, at 42250–57.

[29] *See* Participant Letter, at 2.

[30] 15 U.S.C. 78mm(a)(1).

[31] 17 CFR 242.608(e).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17840 and #17841; ARKANSAS Disaster Number AR–00128]

Presidential Declaration Amendment of a Major Disaster for the State of Arkansas

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4698–DR), dated 04/02/2023.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/31/2023.

DATES: Issued on 05/17/2023.

Physical Loan Application Deadline Date: 07/03/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2024.

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 Arkansas, dated 04/02/2023, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 07/03/2023.

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. 2023–11021 Filed 5–23–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17919 and #17920; TENNESSEE Disaster Number TN–00144]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Tennessee

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 State of Tennessee (FEMA–4701–DR), dated 05/17/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 03/31/2023 through 04/01/2023.

DATES: Issued on 05/17/2023.

Physical Loan Application Deadline Date: 07/17/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 02/20/2024.

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 05/17/2023, 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:

Cannon, Giles, Hardeman, Hardin, Haywood, Johnson, Lewis, Mcnairy, Morgan, Tipton, Wayne.

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 17919 C and for economic injury is 17920 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–11020 Filed 5–23–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12085]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Manet/Degas'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Manet/Degas'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–11046 Filed 5–23–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12083]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''ED RUSCHA/NOW THEN'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or

custodians for temporary display in the exhibition ''ED RUSCHA/NOW THEN'' at The Museum of Modern Art, New York, New York; the Los Angeles County Museum of Art, Los Angeles, California; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–11057 Filed 5–23–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–1169]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Inflation Reduction Act Fueling Aviation's Sustainable Transition Grant Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval for a new information collection. The collection involves soliciting project proposals for the Inflation Reduction Act (IRA) Fueling Aviation's Sustainable Transition (FAST) Grant Program. The information to be collected will be used to determine projects to be awarded FAST competitive discretionary grants.

DATES: Written comments should be submitted by July 24, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Federal Aviation Administration, Attn: Anna Oldani (AEE–500), 800 Independence Ave. SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Chris Dorbian by email at: *christopher.dorbian@faa.gov;* phone: 202–267–8156.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Inflation Reduction Act Fueling Aviation's Sustainable Transition Grant Program.

Form Numbers: Not applicable.

Type of Review: New information collection.

Background: The FAA is using this collection to solicit the information necessary to evaluate and select sustainable aviation fuel and low-emission aviation technology projects for funding under the Inflation Reduction Act (IRA), signed on August 16, 2022. Section 40007 of the Inflation Reduction Act of 2022 directs the Secretary of Transportation to implement a ''competitive grant program for eligible entities to carry out projects located in the United States that produce, transport, blend, or store sustainable aviation fuel, or develop, demonstrate, or apply low-emission aviation technologies.'' The Department of Transportation (DOT), Federal Aviation Administration (FAA) is seeking to establish this new grant program—named the Fueling Aviation's Sustainable Transition (FAST) Grant Program—and collect project proposals via a Notice of Funding Opportunity (NOFO). FAST will have elements focused on sustainable aviation fuel (SAF), to be termed FAST–SAF, and elements focused on low-emission aviation technologies, to be termed FAST-Tech. The program aims to reduce the greenhouse gas emissions (GHG) associated with the aviation sector, in line with the net-zero GHG by 2050 goal outlined in the U.S. Aviation Climate Action Plan. The amount of available funding for the two programs is $244.53M and $46.53M for FAST–SAF and FAST-Tech, respectively.

The NOFO will solicit project proposals from eligible entities. The collected information is required for FAA to evaluate proposals and distribute IRA funds to address U.S. climate goals. Eligible entities who elect to compete for funding and obtain benefits from the FAST Grant Program will submit project information. The information collected is based on grant criteria outlined in the IRA Section 40007.

The FAA will use information submitted to evaluate and select projects for funding that most closely align with the criteria outlined in the NOFO. A team of subject matter experts in aircraft technology development and sustainable aviation fuels from the FAA and other government agencies will assess each application against the applicable criteria. The information FAA is collecting will include technical, project management, and cost proposals for candidate projects. Key evaluation criteria include the capacity for the project to increase the domestic production and deployment of SAF or the use of low-emission aviation technologies and the projected greenhouse gas emissions from such a project.

Project information will be solicited through a NOFO published to *grants.gov*. Applications will be collected via *grants.gov*. The NOFO will outline in detail the form of the full application.

Respondents: Eligible entities as outlined in IRA Section 40007.

Frequency: One-time application per phase of funding.

Estimated Average Burden per Response: Approximately 500 hours.

Estimated Total Annual Burden: Approximately 25,000 hours (assuming 50 applicants).

Issued in Washington, DC, on May 18, 2023.

Kevin Welsh,

Executive Director, Federal Aviation Administration—Office of Environment and Energy.

[FR Doc. 2023–10993 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2023–0474]

Agency Information Collection Activities: Requests for Comments; Clearance of Approval of Continuing Information Collection: Privacy International Civil Aviation Organization (ICAO) Address (PIA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about their intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2023. The collection involves an aircraft operator's request for a privacy ICAO address through a web-based application process. The information to be collected is necessary to qualify for the authorized use of the privacy ICAO address services and for monitoring to support continued airworthiness and enforcement activities.

DATES: Written comments should be submitted by May 31, 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.

By mail: Send comments to FAA at the following address: Mr. Evan Setzer, Program Manager, Service and Broadcast Services (AJM–42), Program Management Organization, Federal Aviation Administration, 600 Independence Ave. SW, Wilbur Wright Building, Washington, DC 20597.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Mr. Jamal Wilson, Surveillance and Broadcast Services, AJM–42, PIA Project Lead at *jamal.wilson@faa.gov* or by phone at (202) 267–4301.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0779.

Title: Privacy International Civil Aviation Organization (ICAO) Address (PIA).

Form Numbers: Not applicable.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2023 (88 FR 12715). In 2010, the FAA issued a final rule mandating equipage requirements and performance standards for Automatic Dependent Surveillance-Broadcast (ADS–B) Out avionics on aircraft operating in certain airspace after December 31, 2019. Aircraft operators must be equipped with ADS–B Out to fly in most controlled airspace. Federal Regulations 14 CFR 91.225 and 14 CFR 91.227 contain requirement details. Each registered aircraft is assigned an aircraft registration number and an ICAO 24-bit aircraft address. This is also referred to as a ''Mode S Code'' in some FAA documents and websites, including the FAA Aircraft Registry. Where a 1090-MHz Extended Squitter (1090ES) transponder is required for ADS–B Out compliance, this ICAO 24-bit aircraft address, based on current transponder avionics standards, is openly broadcasted on the 1090 MHz frequency in transponder replies and ADS–B messages. Subsequently, the nature of openly broadcasting makes the identity of the aircraft publicly available. Industry stakeholders have long suggested that FAA develop a process for aircraft operators who seek anonymity such that their aircraft movements and identity cannot be traced or seen by privately owned sensors that monitor the 1090 MHz frequency and combine this with other downlinked ADS–B and Mode S data being disseminated using the internet. The FAA intends to develop a process for operators who wish to mask their aircraft movements and identity for a period while flying within the sovereign airspace of the United States. Participation in the assignment of privacy ICAO Code addresses is voluntary. Only U.S. registered aircraft can be assigned a privacy ICAO aircraft address. No operator can use a privacy ICAO aircraft address for a U.S.-registered aircraft unless that operator is authorized to use a third-party flight identification for that same aircraft. No unique privacy ICAO address will be assigned to more than one U.S.-registered aircraft at any given time. Once approved, the operator will be assigned a privacy ICAO address. The operator will be required to notify the FAA when their avionics have been loaded with the assigned temporary ICAO 24-bit aircraft address. Owners and operators must verify that the ICAO 24-bit aircraft address (Mode S code) broadcast by their ADS–B equipment matches the assigned privacy ICAO address for their aircraft. Operators can verify what ICAO 24-bit aircraft address is being broadcast by their aircraft by visiting: *https://adsbperformance.faa.gov/PAPRRequest.aspx.* For monitoring privacy ICAO address use, the information will be downloaded by the FAA and entered into the FAA's ADS–B Performance Monitor [Docket No. FAA–2017–1194 published in **Federal Register**, December 20, 2017, as Document Number: 2017–27202].

Respondents: Intended for operators who seek anonymity such that their aircraft movements and identity cannot be easily traced or seen by privately owned sensors that monitor the 1090 MHz frequency. FAA estimates up to 15,000 respondents.

Frequency: Frequency will be occasional based on specific scenarios. An operator can change privacy ICAO aircraft addresses, but no more often than once every 20 days. In the event real-world security concerns become evident, an operator can elect to change their PIA address sooner than 20 days.

Estimated Average Burden per Response: Approximately 15 minutes per application.

Estimated Total Annual Burden: 12,563 hours.

Jamal Wilson,

PIA Project Lead | In-Service Performance and Sustainment (AJM–4220), Federal Aviation Administration.

[FR Doc. 2023–11041 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0125; FMCSA–2014–0102; FMCSA–2014–0106; FMCSA–2014–0107; FMCSA–2014–0383; FMCSA–2014–0384; FMCSA–2015–0326; FMCSA–2018–0138]

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 13 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 June 17, 2023. The exemptions expire on June 17, 2025. Comments must be received on or before June 23, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2013–0125, Docket No. FMCSA–2014–0102, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0107, Docket No.FMCSA–2014–0383, Docket No. FMCSA–2014–0384, Docket No. FMCSA–2015–0326, or Docket No. FMCSA–2018–0138 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2015–0326, or FMCSA–2018–0138) 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, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0125, Docket No. FMCSA–2014–0102, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0107, Docket No. FMCSA–2014–0383, Docket No. FMCSA–2014–0384, Docket No. FMCSA–2015–0326, or Docket No. FMCSA–2018–0138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2015–0326, or FMCSA–2018–0138) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2015–0326, or FMCSA–2018–0138) 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 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 13 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 ofsafety 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 13 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 13 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 June 17, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Kevin Ballard (TX)
Herbert Crowe (MO)
Mark Dickson (TX)
Jacob Gadreault (MA)
David Garland (ME)
Lane Grover (IN)
Paul Langlois (OH)
Billie Jo Martinez (TX)
David Shores (NC)
Kirk Soneson (OH)
James Thomason (MO)
Ramarr Wadley (PA)
Jeffrey Webber (OK)

The drivers were included in docket numbers FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2014–0106, FMCSA–2014–0107, FMCSA–2014–0383, FMCSA–2014–0384, FMCSA–2015–0326, or FMCSA–2018–0138. Their exemptions are applicable as of June 17, 2023 and will expire on June 17, 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 13 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. 2023–11067 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0020]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 10 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 23, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2023–0020 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2023–0020) 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, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 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–2023–0020), 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/docket?D=FMCSA-2023–0020.* 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–2023–0020) 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 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 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 10 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

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).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Application for Exemptions; National Association of the Deaf,'' (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since that time the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Lori Greenidge

Lori Greenidge, 51, holds a class O driver's license in Nebraska.

Lucas Grimm

Lucas Grimm, 19, holds a class C driver's license in Pennsylvania.

Bradley Hannah

Bradley Hannah, 57, holds a class DM driver's license in Kentucky.

Ryan Ketchner

Ryan Ketchner, 41, holds a class C driver's license in Texas.

Jerry Lacouture

Jerry Lacouture, 58, holds a class C driver's license in Texas.

Matthew Loschen

Matthew Loschen, 40, holds a driver's license in Michigan.

Edgar Pacheo

Edgar Pacheo, 32, holds a class D driver's license in Arizona.

Nicholas Romano

Nicholas Romano, 55, holds a class D driver's license in Massachusetts.

Chadwick Savoy

Chadwick Savoy, 47, holds a class R driver's license in Mississippi.

Rebecca Yeater

Rebecca Yeater, 45, holds a class E driver's license from Florida.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–11066 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0379; FMCSA–2016–0011; FMCSA–2016–0313; FMCSA–2018–0057; FMCSA–2020–0045; FMCSA–2020–0047; FMCSA–2020–0053]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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 13 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

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–2014–0379, FMCSA–2016–0011, FMCSA–2016–0313, FMCSA–2018–0057, FMCSA–2020–0045, FMCSA–2020–0047, or FMCSA–2020–0053) 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 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 request. 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 April 12, 2023, FMCSA published a notice announcing its decision to renew exemptions for 13 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 22084). The public comment period ended on May 12, 2023, and one comment was 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)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The commenter believes the requirement for number of years an applicant is seizure free should be extended for a longer period.

FMCSA has granted these exemptions on the basis that all applicants have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV. In addition, these applicants have been consistently monitored throughout their time of holding an exemption showing the maintenance of their conditions.

IV. Conclusion

Based on its evaluation of the 13 renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of April and are discussed below.

As of April 2, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 22084):

Sayed Abbed (IL)
Steven Claphan (MI)
Brian Klein (IN)
Thomas Marx (WA)
Jeb McCulla (LA)
Jeffrey Smith, Jr. (FL)
Eric Smits (WI)

The drivers were included in docket number FMCSA–2020–0045, FMCSA–2020–0047, or FMCSA–2020–0047. Their exemptions were applicable as of April 2, 2023 and will expire on April 2, 2025.

As of April 30, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 22084):

Ryan Babler (WI)
Bradley Hollister (PA)
Sheldon Martin (NY)
Larry Nicholson (NC)
Edgar Snapp (IN)
Daniel Zielinski (OR)

The drivers were included in docket number FMCSA–2014–0379, FMCSA–2016–0011, FMCSA–2016–0313 or FMCSA–2018–0057. Their exemptions were applicable as of April 30, 2023 and will expire on April 30, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

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(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–11065 Filed 5–23–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Federal Transit Administration (FTA) announces a public meeting of the Transit Advisory Committee for Safety (TRACS).

DATES: The TRACS meeting will be held on June 7, 2023, from 10:00 a.m. to 5:00 p.m., and June 8, 2023, from 10:00 a.m. to 2:00 p.m., Eastern Time. This will be a hybrid meeting, taking place both in person at the U.S. Department of Transportation (DOT) Headquarters and virtually via Zoom for Government. Requests to attend the meeting in person or virtually must be received no later than May 31, 2023. Requests for disability accommodations must be received no later than May 31, 2023. Requests to verbally address the committee during the meeting must be submitted with a written copy of the remarks to DOT no later than May 31, 2023. Requests to submit written materials to be reviewed during the meeting must be received no later than May 31, 2023.

ADDRESSES: The meeting will be held in person at DOT Headquarters, 1200 New Jersey Avenue SE, Washington, District of Columbia, 20590 and virtually via Zoom for Government. Any committee related requests should be sent by email to *TRACS@dot.gov.* The virtual meeting's online access link and a detailed agenda will be provided upon registration. They will also be posted on the TRACS web page at: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs* one week in advance of the meeting. A copy of the meeting minutes and other TRACS-related information will also be available on the TRACS web page.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, *Joseph.DeLorenzo@dot.gov*; or Bridget Zamperini, TRACS Program Manager, FTA Office of Transit Safety and Oversight, (202) 366–0306, or *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C. app. 2). TRACS is composed of up to 25 members representing a broad base of perspectives on transit safety necessary to discharge its responsibilities. Please see the TRACS web page for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

I. Background

The U.S. Secretary of Transportation (Secretary) established TRACS in accordance with FACA to provide information, advice, and recommendations to the Secretary and FTA Administrator on matters relating to the safety of public transportation systems.

II. Agenda

- Welcome Remarks and Introductions
- Overview of Hybrid Meeting Platform Functions
- Review of TRACS Tasks, Subcommittees, and Subcommittee Work Plans:
  1. Advancing Rider and Worker Safety
  2. Reducing Bus Collisions
  3. Cyber and Data Security Systems
- Subcommittee Breakout Working Sessions
- Public Comments
- Summary of Deliverables, Next Steps, and Concluding Remarks

III. Public Participation

The in-person attendance option will be open to the public on a first come, first served basis, as space is limited. Members of the public who wish to attend in-person are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section. The virtual attendance option does not have restrictions. Members of the public who wish to attend virtually also are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the email address listed in the **ADDRESSES** section.

There will be a total of 60 minutes allotted for oral comments from members of the public at the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, to include the individual's name, address, and organizational affiliation to the email address listed in the **ADDRESSES** section.

Written and oral comments for consideration by TRACS during the meeting must be submitted no later than the deadline listed in the **DATES** section to ensure transmission to TRACS members prior to the meeting. Comments received after that date will be distributed to the members but may not be reviewed prior to the meeting.

Nuria I. Fernandez,

Administrator.

[FR Doc. 2023–11078 Filed 5–23–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Renewal of an Approved Information Collection; Comment Request; Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection

titled ''Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.''

DATES: Comments must be received by July 24, 2023.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0242, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0242'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet. Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0242'' or ''Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7 St. SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection.

Title: Supervisory Guidance: Supervisory Review Process of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.

OMB Control No.: 1557–0242.

Frequency of Response: Event-generated.

Affected Public: National banks and Federal savings associations subject to the advanced approaches capital rule.

Abstract: In 2008, the OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation issued a supervisory guidance document to assist banking organizations in implementing the supervisory review process, or Pillar 2, of the advanced approaches risk-based capital rule.[1] Therefore, this guidance is relevant for OCC-supervised national banks and Federal savings associations (collectively, banks) that are subject to the advanced approaches capital rule.[2] It does not apply to small banks.

Paragraphs 37, 41, 43, and 46 of the guidance contain information collections. Paragraph 37 provides that banks should clearly state the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Paragraph 41 provides that banks should maintain thorough documentation of ICAAP. Paragraph 43 specifies that the board of director should approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors, under paragraph 46, should periodically, and at least annually, review the assessment of overall capital adequacy and analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

Estimated Burden:

Number of Respondents: 20.

Estimated Burden per Respondent: 140 hours.

Total Estimated Annual Burden: 2,800 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- The accuracy of the OCC's estimate of the burden of the collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2023–10994 Filed 5–23–23; 8:45 am]

BILLING CODE 4810–33–P

[1] 73 FR 44620 (July 31, 2008)

[2] *See* 12 CFR 3.100(b).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the name of one individual that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this individual are blocked, and U.S. persons are generally prohibited from engaging in transactions with the individual.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On May 16, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individual are blocked under the relevant sanctions authority listed below.

Individual

1. MATVEEV, Mikhail Pavlovich (a.k.a. MATVEEV, Mihail Pavlovich; a.k.a. MATVEYEV, Mikhail P; a.k.a. "BORISELCIN"; a.k.a. "M1X"; a.k.a. "MATVEYEV, Mikhail Mix" (Cyrillic: "MATBEEB, Михаил Mix"); a.k.a. "MATYEEV, Mikhail" (Cyrillic: "MATBEEB, Михаил"); a.k.a. "UHODIRANSOMWAR"; a.k.a. "WAZAWAKA"), 8 Serzhana Koloskova Street, Apartment 6, Kaliningrad, Russia; DOB 17 Aug 1992; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201; Passport 733584513 (Russia) (individual) [CYBER2].

Designated pursuant to section 1(a)(ii)(C) of Executive Order 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities'', 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities'', 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended) for being responsible for or complicit in, or having engaged in, directly or indirectly, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

Dated: May 16, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–11036 Filed 5–23–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Matching Program

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of a re-establishment matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service (IRS) Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

DATES: Comments on this matching notice must be received no later than 30 days after date of publication in the **Federal Register**. If no public comments are received during the period allowed for comment, the re-established agreement will be effective July 1, 2023, provided it is a minimum of 30 days after the publication date.

Beginning and ending dates: The matches are conducted on an ongoing basis in accordance with the terms of the DIFSLA Computer Matching Agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, July 1, 2023, through December 31, 2024. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Comments may be sent by email to *glds.cmppa@irs.gov* or by mail to the Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2–Q08.124, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: General questions may be sent to Internal Revenue Service; Privacy, Governmental Liaison and Disclosure; Data Services; ATTN: Patricia Grasela, Program Manager, 2970 Market Street, BLN: 2–Q08.124, Philadelphia, PA 19104. Telephone: 267–466–5564 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The notice of the matching program was last published at 85 FR 64227 (October 9, 2020). Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Participating Agencies

Name of Source Agency

Department of the Treasury, Internal Revenue Service.

Name of Recipient Agencies

A. Federal agencies expected to participate:
   1. Department of Veterans Affairs, Veterans Benefits Administration
   2. Department of Veterans Affairs, Veterans Health Administration
   3. Social Security Administration

B. State agencies expected to participate using non-federal records are:
   1. Alabama Department of Human Resources
   2. Alabama Medicaid Agency
   3. Alaska Department of Health and Social Services, Division of Public Assistance
   4. Arizona Department of Economic Security
   5. Arkansas Department of Human

Services
6. California Department of Social Services
7. Connecticut Department of Social Services
8. Delaware Department of Health and Social Services
9. District of Columbia Department of Human Services
10. Florida Department of Children and Families
11. Georgia Department of Human Services, Division of Family and Children Services
12. Hawaii Department of Human Services
13. Idaho Department of Health and Welfare
14. Illinois Department of Human Services
15. Indiana Family and Social Services Administration, Division of Family Resources
16. Iowa Department of Health and Human Services
17. Kansas Department for Children and Families
18. Kentucky Cabinet for Health and Family Services
19. Louisiana Department of Health
20. Louisiana Department of Children and Family Services
21. Maine Department of Health and Human Services
22. Maryland Department of Human Services
23. Michigan Department of Health and Human Services
24. Minnesota Department of Human Services
25. Mississippi Department of Human Services
26. Mississippi Division of Medicaid
27. Missouri Department of Social Services
28. Montana Department of Public Health and Human Services
29. Nebraska Department of Health and Human Services
30. New Hampshire Department of Health & Human Services, Division of Economic and Housing Stability, Bureau of Family Assistance
31. New Jersey Department of Human Services, Division of Family Development
32. New Mexico Human Services Department
33. New York State Office of Temporary and Disability Assistance
34. North Carolina Department of Health and Human Services
35. North Dakota Department of Health and Human Services, Humans Services Division, Economic Assistance Section
36. Ohio Department of Jobs and Family Services
37. Ohio Department of Medicaid
38. Oklahoma Department of Human Services, Adult and Family Services
39. Oregon Health Authority, Oregon Department of Human Resources
40. Pennsylvania Department of Human Services
41. Rhode Island Department of Human Services
42. South Carolina Department of Social Services
43. South Dakota Department of Social Services
44. Tennessee Department of Human Services
45. Texas Health and Human Services Commission
46. Utah Department of Workforce Services
47. Vermont Department of Children and Families, Economic Services Division
48. Virginia Department of Social Services
49. Washington Department of Social and Health Services
50. Wisconsin Department of Children and Families
51. Wyoming Department of Family Services

Authority for Conducting the Matching Program: Public Law 98–369, Deficit Reduction Act of 1984, requires the Agency administering certain federally assisted benefit programs to conduct income verification to ensure proper distribution of benefit payments. The records in this match are to be disclosed only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of benefits under, these programs. In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC), the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the IRS files to any federal, state, or local agency administering a program listed below:

(i) A state program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a state plan approved under title XIX of the Social Security Act, or subsidies provided under section 1860D–14 of such Act;

(iii) Supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a state plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a state law described in section 3304 of the IRC;

(vi) Assistance provided under the Food and Nutrition Act of 2008;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(viii)(II) parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(viii)(III) Health-care services furnished under sections 1710(a)(2)(G), 1710(a)(3), and 1710(b) of such title.

Purpose(s): The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interests of the subjects of the match. Information is disclosed by the IRS only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

Categories of Individuals: Individuals applying for or receiving benefits under federal and state administered programs.

Categories of Records: The IRS will provide return information from information returns (*e.g.,* Forms 1099–DIV, 1099–INT, and W–2G) filed by payers of unearned income in the IRS Information Returns Master File (IRMF) (Treasury/IRS 22.061). The recipient Agency will furnish the IRS with requests for records in accordance with the current IRS Publication 3373, Disclosure of Information to Federal, State, and Local Agencies (DIFSLA) Handbook. The Agency may request return information from IRS on a monthly basis for new applicants and may request information with respect to all beneficiaries once per year. The requests from the Agency will include: the Social Security Number (SSN) and name control (first four characters of the surname) for each individual for whom unearned income information is requested. IRS will provide a response record for each individual identified by the Agency. The total number of records will be equal to or greater than the number of records submitted by the Agency. In some instances, an individual may have more than one record on file. When there is a match of an individual SSN and name control,

IRS will disclose the following to the Agency: payee account number; payee name and mailing address; payee taxpayer identification number (TIN); payer name and address; payer TIN; and income type and amount.

System(s) of Records:

IRS will extract return information with respect to unearned income from the Information Returns Master File (IRMF), Treasury/IRS 22.061, as published at 80 FR 54081–082 (September 8, 2015), through the DIFSLA Computer Matching Program.

Department of Veterans Affairs will provide to IRS information from the Veterans Benefits Administration—Compensation, Pension and Education, Rehabilitation Records—VA, 58 VA 21/22/28, amended and republished in its entirety at 86 FR 61858 (November 8, 2021); and Veterans Health Administration—Healthcare Eligibility Records, Income Verification Records—VA, 89VA10NB, as published at 73 FR 26192 (May 8, 2008), and updated at 78 FR 76897 (December 19, 2013).

Social Security Administration will provide to IRS information from the Office of Systems Requirements—Supplemental Security Income Record and Special Veterans Benefits, 60–0103, last fully published at 71 FR 1830 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), 83 FR 31250–51 (July 3, 2018), and 83 FR 54969 (November 1, 2018).

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2023–10981 Filed 5–23–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Wednesday,

No. 100 May 24, 2023

Part II

Department of Veterans Affairs

38 CFR Part 21

Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AQ88

Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend the Veteran Readiness and Employment and Education regulations to implement the provisions of the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, which modified the manner in which payments of educational assistance are determined and expanded the types of programs students may pursue under the Post-9/11 GI Bill. VA is also proposing to implement section 1002 of the Supplemental Appropriations Act, 2009, which authorized the ''Marine Gunnery Sergeant John David Fry Scholarship,'' and a select number of provisions of the Harry W. Colmery Veterans Educational Assistance Act of 2017. This proposed rule would include the rules necessary to implement provisions of other legislative enactments that affect the provision of educational assistance to veterans and their eligible dependents and beneficiaries.

DATES: Comments must be received on or before July 24, 2023.

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

FOR FURTHER INFORMATION CONTACT: Thomas Alphonso, Assistant Director, Policy and Procedures, Education Service, Department of Veterans Affairs, Veterans Benefits Administration (22), 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (202) 461–9800. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Post-9/11 GI Bill Improvements

a. General

On January 4, 2011, the President signed into law the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, Public Law 111–377, amending mainly chapter 33 of title 38, United States Code (U.S.C.); however, a few amendments in the law have an impact on other VA educational assistance programs and title 38 chapters.

b. Effective Dates of Amendments Contained in Public Law 111–377

In most instances, the changes made by Public Law 111–377 had an effective date of August 1, 2011, although some became effective on the date of enactment, some became effective after an interval of time after the signing of the Act (*e.g.,* effective 60 days after the date of the enactment of this Act, *see* section 103(c)), some became effective on October 1, 2011, and some became effective on a retroactive basis. In this proposed rule, we propose to clarify the effective dates of each provision in existing and new VA regulations. For instance, existing 38 CFR 21.9505, 21.9560, 21.9570, 21.9590, 21.9600, 21.9625, 21.9635, 21.9640, 21.9675, 21.9680, 21.9690 and 21.9720 would be amended to include language explaining that the rules contained in those existing sections describe the standards in effect before August 1, 2011, unless otherwise noted, whereas §§ 21.9506, 21.9561, 21.9571, 21.9591, 21.9601, 21.9626, 21.9636, 21.9641, 21.9667, 21.9668, 21.9676, 21.9681, 21.9691 and 21.9721 would be added with rules comparable to rules in existing provisions, but applicable after July 31, 2011, unless otherwise noted.

c. Section 101—Modification of Entitlement to Educational Assistance

Section 101(a)(1) of Public Law 111–377 amended 38 U.S.C. 3301(1) by adding a paragraph that expands the definition of active duty to include full-time service in the National Guard for certain purposes. We propose to implement section 101(a)(1) in proposed §§ 21.9505 and 21.9506. Under the expanded definition of active duty, these National Guard members are eligible for Post-9/11 GI Bill benefits. Section 101(d)(1) prohibits VA from paying benefits because of the amendment to section 3301(1) before October 1, 2011, but provides for an effective date of August 1, 2009, for the section 101(a)(1) amendment. Therefore, although a National Guard member may be entitled to Post-9/11 GI Bill benefits for the period between August 1, 2009, and September 30, 2011, we could not pay these benefits until October 1, 2011. Presently, under current 38 CFR 21.9625(a)(1), if an award is the first award of educational assistance for the program of education the eligible person is pursuing under the Post-9/11 GI Bill, the commencing date of the award of educational assistance is the latest of: (a) August 1, 2009, the earliest possible beginning date as provided in § 21.9625; (b) the date the educational institution certifies; (c) one year before the date of claim as determined by § 21.1029(b); (d) the effective date of the approval of the course, or (e) one year before the date VA receives the approval notice.

For example, if a National Guard member applied for chapter 33 benefits on October 12, 2011, and it is determined that the member was eligible for educational assistance beginning August 1, 2009, under current § 21.9625(a)(1)(B) benefits could not be paid for any period earlier than October 12, 2010, *i.e.,* one year prior to the date of application. Although the National Guard member was eligible for benefits from August 1, 2009, because this member did not apply until October 12, 2011, under our current regulations the furthest back that VA could pay benefits is October 12, 2010. This is problematic because National Guard members would not have applied for benefits until after January 4, 2011, when they first became eligible for benefits under the change in law. However, if National Guard members applied for benefits on January 4, 2011, because of current law they would only be paid from January 4, 2010, the latest of the specified beginning dates, instead of August 1, 2009, the earliest possible beginning date, thereby losing out on retroactive benefits. To remedy this problem, we propose to add § 21.9626(n) to provide special rules for determining the beginning dates of awards for National Guard members made eligible by Public Law 111–377. With these changes VA could pay retroactive benefits to newly eligible National Guard members beyond the one-year limit required by current regulations.

Additionally, while the statute is silent as to a time limit for retroactive claims, for the reasons discussed below,

VA is proposing to adopt a time limit for newly eligible National Guard members to file a claim for retroactive benefits. Our concern is that without a limited window for claims for retroactive payment, we will continue to see claims far into the future, which could result in increased unforeseen burdens and costs for VA. Therefore, in § 21.9626(n), VA proposes to specify that the special beginning-date rules are only available to a newly eligible National Guard member if he or she applied for retroactive benefits by September 30, 2012 (*i.e.,* one year from the first day on which VA was statutorily allowed to make payments to the National Guard members for the expanded benefits). After the expiration of the one-year period, the beginning-date rules under § 21.9625 for determining a beginning date would apply.

Under 38 U.S.C. 5110(g) and 5113(a), benefits based on a new, liberalizing statute generally may be paid for periods no earlier than one year before the date of application therefor. The purpose of that one-year retroactive period is to provide claimants a reasonable grace period in which to learn of the new law and file their claims for the newly authorized benefit. *See McCay* v. *Brown,* 9 Vet. App. 183, 187–88 (1996). As noted above, however, imposing a one-year retroactive limit to benefits authorized by section 101(a)(1) of Public Law 111–377 would defeat the clear purpose of section 101(a)(1) and (d)(1) to authorize payments for periods extending back to August 1, 2009, more than a year before the statute's enactment. We believe proposed § 21.9626(n) appropriately gives effect to all applicable statutes by providing a one-year grace period for applying for the new benefits and ensuring that those who applied within that period potentially may receive the full extent of retroactive benefits authorized by section 101(a)(1) and (d)(1).

Section 101(a)(2) of Public Law 111–377 amended 38 U.S.C. 3301(2)(A) by adding ''One Station Unit Training'' to the definition of ''entry level and skill training'' for members of the Army (effective January 4, 2011), and section 101(a)(3) amended 38 U.S.C. 3301(2)(E) by adding ''Skill Training (or so-called ''A'' School)'' to the definition of ''entry level and skill training'' for members of the Coast Guard (effective January 4, 2011, and applicable to individuals entering service on or after that date). We propose to add ''One Station Unit Training'' for Army members and ''Skill Training (or so-called ''A'' School)'' for Coast Guard members to the definition of ''entry level and skill training'' in 38 CFR 21.9505 (definitions applicable prior to August 1, 2011, to the administration of the chapter 33 program). We propose to note that the inclusion of ''One Station Unit Training'' for Army members and ''Skill Training (or so-called ''A'' School)'' for Coast Guard members in the definition of ''entry level and skill training'' applies effective January 4, 2011.

Section 101(b) of Public Law 111–377 amended 38 U.S.C. 3311(c)(4) (effective January 4, 2011, with respect to discharges or releases that occur on or after that date) to clarify that a discharge or release from active duty for a preexisting, non-service-connected condition, hardship, or a condition that interfered with duty must be honorable for the individual to establish eligibility for educational assistance. We propose to include this honorable discharge requirement in § 21.9520(a)(5). Additionally, in § 21.9520(a) we propose to amend the chapter 33 eligibility criteria to clarify the need for an honorable discharge with respect to these types of discharges on or after January 4, 2011.

Section 101(c) of Public Law 111–377 amended 38 U.S.C. 3311(d)(2) to prohibit service pursuant to an agreement in connection with attendance at the Coast Guard Academy from being considered active duty for purposes of establishing entitlement to educational assistance under chapter 33 (effective January 4, 2011, with respect to individuals entering into agreements on or after that date). We propose to implement this change in the definition of ''active duty'' in 38 CFR 21.9505 and 21.9506, specifically in paragraph (3)(ii)(B)(*2*) of the definition of ''active duty'' in both sections. Although section 101(c) referred to 14 U.S.C. 182 as the statute governing Coast Guard Academy service agreements, Congress later replaced section 182 with 14 U.S.C. 1925. We propose to refer to the current statute.

d. Section 102—Amounts of Assistance for Programs of Education Leading to a Degree Pursued at Public, Non-Public, and Foreign Institutions of Higher Learning (IHL)

Section 102(a) of Public Law 111–377 amended 38 U.S.C. 3313(c) to specify the amount of assistance to be paid for pursuit of a program of education leading to a degree on more than a half-time basis at a public, non-public, or foreign IHL. The amended law provides that, effective August 1, 2011, the amount of educational assistance for payment of tuition and fees for an individual's pursuit of an approved program of education leading to a degree on more than a half-time basis at a public IHL is the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees. For pursuit of an approved program of education leading to a degree on more than a half-time basis at a non-public or foreign IHL, effective August 1, 2011, the amount of educational assistance for tuition and fees is the lesser of (i) the actual net cost for tuition and fees assessed by the institution after application of the same waivers, reductions, scholarships, and assistance described above and (ii) $17,500 (the cap) for the academic year beginning on August 1, 2011, or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)).

We would implement these changes effective August 1, 2011, in a new section, specifically 38 CFR 21.9641(b)(1) and (b)(2). The lump sum payment of educational assistance for tuition and fees is issued directly to the IHL for the entire term, quarter, or semester that the individual is pursuing the program of education, as provided in 38 CFR 21.9640(b)(1)(i). Rather than defining terms such as ''Net cost'' and ''Non-public institution'' in § 21.9641, we propose to define those terms in § 21.9506, because they would also be applicable to other provisions that are effective after July 31, 2011.

In § 21.9506, we propose to define ''net cost'' based on how it is described in Public Law 111–377, section 102, which specifies ''net cost'' as tuition and fees ''after the application of any . . . [w]aiver of, or reduction in, tuition and fees'' and any ''[s]cholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965).'' We propose to also define ''non-public institution'' in § 21.9506, because we use this term often throughout the proposed regulations in this rulemaking to explain the different set of provisions

which apply to private institutions. We propose to define ''Non-public institution'' as a proprietary institution, as that term is defined in 38 CFR 21.4200(z), which refers to an educational institution that is not a public educational institution, that is located in a State, and that is legally authorized to offer a program of education in the State where the educational institution is physically located. Additionally, because section 3313(c), as amended by section 102(a) of Public Law 111–377, requires VA to pay the net cost for tuition and fees rather than established charges, we would use the phrase ''tuition and fees'' throughout the proposed rules.

Section 102(b) of Public Law 111–377 amended 38 U.S.C. 3313(c)(1)(B) effective August 1, 2011, to provide for rates of monthly housing stipends (or the ''monthly housing allowance'') under the Post-9/11 GI Bill that are proportional to an individual's rate of pursuit of a program of education, as long as the rate of pursuit is more than half-time. For individuals pursuing a program of education leading to a degree (or program of education at a non-college degree institution, as provided by the changes in section 105(b)(3) of Pub. L. 111–377) on more than a half-time basis, under the amended law, the monthly housing stipend must be determined by multiplying the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 (for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the IHL at which the individual is enrolled) by the lesser of 1.0 or the number of course hours borne by the individual in pursuit of the program of education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest tenth. For example, if a student is enrolled in 18 course hours and the minimum number of course hours required for full-time pursuit of the program of education is 12 course hours, the applicable multiplier would be 1.0. If the student is enrolled in 9 course hours under the same full-time criteria in this example, the applicable multiplier would be 0.80 (0.75 rounded to the nearest tenth). We note that section 3313(c)(1)(B)(i)(I) was further amended by Public Law 115–48, section 107, so that the monthly housing allowance calculation would use the ZIP code area in which is located the campus of the IHL where the individual physically participates in a majority of classes rather than the ZIP code area in which is located the IHL at which the individual is enrolled. In § 21.9641(c)(1)(ii), we refer to ''ZIP code'' or ''location code.''

Section 5003 of Public Law 110–252 authorized VA to pay a monthly housing allowance equal to the monthly amount of the Basic Allowance for Housing (BAH) payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution of higher education at which the individual is enrolled. Public Law 110–252 did not address payment of the monthly housing allowance in areas for which there is no ZIP code. For areas without a ZIP code and U.S. Territories, the Department of Defense (DoD) pays an Overseas Housing Allowance (OHA) based on a location code. Therefore, for those individuals attending residence courses at locations that are not identified with a ZIP code, but that DoD identifies with a locality code, as provided in proposed § 21.9641(c)(1)(ii), we would pay the monthly housing stipend at the same rate as the amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing within the locality code identified by DoD. This payment change would be effective on August 1, 2011, which is the date that VA changed its interpretation of the statute.

We note that, under section 105(b) of Public Law 111–377, as discussed below, for individuals pursuing a certificate or other non-college degree at an educational institution other than an IHL on more than a half-time basis, the monthly housing stipends are calculated similar to the monthly housing stipends for individuals pursuing a program of education leading to a degree, discussed above, and are limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed.

For individuals pursuing residence training at a foreign IHL on more than a half-time basis, under section 3313(c)(1)(B)(ii), the monthly housing stipend must be determined by multiplying the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 by the lesser of 1.0 or the number of course hours borne by the individual in pursuit of the program of education, divided by the minimum number of course hours required for full-time pursuit of the program of education, rounded to the nearest tenth.

For individuals pursuing training solely via distance learning on more than a half-time basis, under 38 U.S.C. 3313(c)(1)(B)(iii), effective October 1, 2011 (*see* section 102(c)(2) of Pub. L. 111–377), the monthly housing stipend is 50 percent of the rate paid to individuals pursuing residence training at a foreign IHL on more than a half-time basis. However, for individuals pursuing hybrid training that combines distance learning with residence training, effective October 1, 2011, the monthly housing stipend would be the residence training housing stipend without regard to the percentage of the training that is conducted through distance learning as compared to residence training (*i.e.,* as long as he/she is enrolled in at least one residence training class, the individual will receive a monthly housing allowance as if all classes in the term are residence training classes. The statute does not specifically define how VA should pay monthly housing for hybrid training. Because hybrid training contains at least some element of residential training, VA proposes to consider hybrid training to be in-residence for the purposes of determining the appropriate monthly housing stipend rate. This is necessary because 38 U.S.C. 3313(c)(1)(B)(iii) merely distinguishes between training that is pursued solely through distance learning and training that is not pursued solely through distance learning. As a result of this requirement, an individual pursuing training through a hybrid course is not pursuing training solely through distance learning and, therefore, is not subject to a housing stipend restricted to 50% of the housing stipend payable to an individual pursuing a program of education at a foreign IHL on more than a half-time basis.

Section 3313(c)(1)(B) requires payment of the monthly housing stipend in a certain amount equivalent to the DoD amount specified in 37 U.S.C. 403. Thus, when the DoD rate decreases under section 403(b)(3), the VA rate should similarly decrease. However, when specifying the amount of the monthly housing stipend, section 3313(c)(1)(B) refers to the monthly amount of the basic allowance for housing payable under section 403 without specifying the particular paragraph in section 403 on which to rely. While section 403(b)(3), in particular, specifies the amount of the monthly housing stipend DoD pays servicemembers, and other provisions in

section 403(b) generally pertain to DoD's establishment of housing rates, section 403(b)(6) establishes an exception to those general rates applicable to specific servicemembers. The lack of specificity in section 3313(c)(1)(B) with respect to a particular paragraph in section 403 on which to rely when setting the VA monthly housing rate reflects some ambiguity that we believe is best resolved by applying ''rate protection'' to chapter 33 just as DoD ''grandfathers'' the basic allowance for housing for servicemembers who retain uninterrupted eligibility under section 403(b)(6). Our longstanding interpretation of section 3313(c)(1)(B) has been that all provisions of section 403 are potentially applicable in determining the chapter 33 monthly housing stipend for VA claimants. And we view section 403(b)(6) as a component of the housing-rate structure incorporated by reference in section 3313(c)(1)(B). Our interpretation of section 3313(c)(1)(B) to apply rate protection would result in the best outcome for veterans because it would allow them to retain a higher rate of the monthly housing stipend. Furthermore, we believe it would be unfair to penalize a veteran student by lowering the monthly housing stipend as a result of a change that was not initiated by the student and was beyond his or her control. Thus, we propose to implement rate protection in § 21.9641(c)(8) for chapter 33 beneficiaries if they previously received the monthly housing stipend for the same type of training at the same educational institution and if they have not had more than a six-month break in training at the same educational institution.

We propose to implement these new monthly housing stipend payment rates in new § 21.9641(c) because most changes are effective on August 1, 2011. In § 21.9641(c), we propose to specify the monthly housing allowance payable and the respective effective dates of payments for individuals pursuing programs of education at domestic and foreign IHLs and non-college degree institutions and for individuals pursuing on-the-job or apprenticeship training. However, given that the change to the housing amount for distance learning did not take effect until October 1, 2011, we propose to specify the different effective date for pursuit of training solely via distance learning in paragraph (c)(4), by indicating that, after September 30, 2011, an individual who is not on active duty and who is pursuing a program of education solely through distance learning at a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to 50 percent of the housing stipend payable to an individual pursuing a program of education at a foreign IHL on more than a half-time basis.

e. Section 103—Amounts of Assistance for Programs of Education Leading to a Degree Pursued on Active Duty

Section 103 of Public Law 111–377 amended 38 U.S.C. 3313(e) to provide that, effective on or after March 5, 2011, the amount of educational assistance payable for pursuit of a program of education leading to a degree on more than a half-time basis at a public IHL by an individual while the individual is serving on active duty in the Armed Forces is the lesser of: (1) the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees, and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees, as stated in 38 U.S.C. 3313(e)(2)(A)(i), or (2) that portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has informed VA that he or she wishes to receive payment (tuition assistance Top-Up), as stated in 38 U.S.C. 3313(e)(2)(A)(iii). For pursuit of a program of education leading to a degree on more than a half-time basis at a non-public or foreign IHL by an individual while the individual is serving on active duty, the amount of educational assistance, as provided in 38 U.S.C. 3313(e)(2)(A)(ii) and (iii), is the lesser of: (1) the actual net cost for tuition and fees assessed by the institution after application of the same waivers, reductions, scholarships, and assistance described above, (2) $17,500 (the cap) for the academic year beginning on August 1, 2011, or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)), or (3) tuition assistance Top-Up. These rates specified in amended section 3313(e) are the same as the rates for similarly situated individuals not serving on active duty. Although tuition assistance Top-Up is not taken into account when determining the rates for individuals not serving on active duty, consideration of tuition assistance Top-Up for individuals serving on active duty does not change the calculation. Because Federal aid (which includes military tuition assistance) is first deducted in the calculation of the net cost of tuition and fees, the amount of tuition assistance Top-Up (the institution's charges not covered by military tuition assistance) will always be the same as the institution's actual net cost for tuition and fees, so the lesser of these two amounts is the same amount (actual net cost). Therefore, we propose to state in § 21.9641(b)(1) and (2) that we would pay the same rate (either actual net cost or a capped rate) to individuals who are serving on active duty and individuals who are not serving on active duty for pursuit of programs of education leading to a degree at public or non-public or foreign IHLs.

Section 103(a)(2)(E) of Public Law 111–377 added section 3313(e)(2)(C), which requires consideration of an individual Servicemember's length of time in service on active duty when determining the amount of educational assistance payable to an individual serving on active duty for pursuit of a program of education at a public, non-public, or foreign IHL. Under section 3313(e)(2)(C), the amounts payable are limited to a proportionate percentage based on length of time in service, as specified in section 3313(c)(2) through (7), of the assistance that would otherwise be payable if a Servicemember had completed an aggregate of 36 months of active duty. For example, if a Servicemember served an aggregate of at least 12 months, but less than 18 months, the applicable percentage to be applied, as specified in section 3313(c)(5), is 60 percent.

In addition, section 103(a)(2)(E) adds section 3313(e)(2)(B), which provides for a lump sum for the first month of each quarter, semester, or term, as applicable, of the program of education pursued by an individual on active duty for books, supplies, equipment, and other educational costs in an amount equal to $1,000, multiplied by the fraction of an academic year the quarter, semester or term represents and the applicable percentage as specified in section 3313(c)(2) through (7), depending on the individual's length of service.

We propose to implement the new provisions relating to payment of educational assistance for programs pursued while an individual is on active duty in new § 21.9640(d) and

§ 21.9641(a), (b), (c)(6) and (d) to make clear the particular effective dates that apply to individuals pursuing programs while on active duty. In § 21.9640(d)(1), we propose to specify the amounts payable for individuals on active duty for programs of education beginning on August 1, 2009, and ending on March 4, 2011, before the section 103 changes took effect. Consistent with current § 21.9640(d), we propose to provide that the amount payable will be the lowest of (1) the established charges that similarly circumstanced nonveterans would be required to pay who are enrolled in the individual's program of education; (2) that portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has informed VA that he or she wishes to receive payment; (3) an amount that is the lesser amount of (1) or (2) above, divided by the number of days in the individual's quarter, semester, or term to determine the individual's daily rate, which is then multiplied by the individual's remaining months and days of entitlement to educational assistance.

We propose to implement the section 103 requirements, requiring, beginning March 5, 2011, changes in the amount of educational assistance payable for pursuit of programs of education leading to a degree on more than a half-time basis at public, non-public and foreign IHLs in § 21.9640(d)(2). We propose to specify that the amounts payable for individuals on active duty pursuing a program of education leading to a degree on a more than half-time basis beginning after March 4, 2011, but before August 1, 2011, would be based on the net cost for in-State tuition and fees. We propose to implement section 103(a)(2)(E) relating to the book stipend for the pursuit of an educational program while on active duty specifically in § 21.9641(d)(1)(i)(B).

In § 21.9641(a)(1), we propose to provide the percentages of the maximum amounts payable for the pursuit of approved program of education under chapter 33, which is based on the aggregate active duty service after September 10, 2001, for training that begins after July 31, 2011. For clarity, we would include a column with the number of days of the aggregate active duty service upon which the applicable percentages of the maximum payment amounts are based. We propose to also add this column with the number of days to § 21.9640(a)(1). In addition, we propose to clarify footnote 3 in § 21.9640(a)(1) concerning the requirement in 38 U.S.C. 3311(e) that we pay at the 70 percent level if an individual meets the service requirements at both the 80 and 70 percent level and add a reference to section 3311(e), the authority for this rule. We propose to include the same footnote in § 21.9641(a)(1).

In § 21.9641(b)(1), we propose to state that for individuals, whether on active duty or not on active duty, pursuing an approved program of education leading to a degree at a public institution of higher learning, effective after July 31, 2011, the lump sum payment of educational assistance is the applicable percentage of the net cost for in-state tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees.

In 38 CFR 21.9641(b)(2), we propose to state that for individuals, whether on active duty or not on active duty, pursuing an approved program of education leading to a degree at a non-public or foreign institution of higher learning, effective after July 31, 2011, the lump sum payment of educational assistance is the lesser of the actual net cost for tuition and fees assessed by the institution after application of the same waivers and reductions described above; $17,500 (the cap) for the academic year beginning on August 1, 2011; or the cap, as adjusted annually, for any subsequent academic year beginning on August 1 (the amount of the cap will be increased for each subsequent academic year by the percentage increase equal to the most recent percentage increase determined under 38 U.S.C. 3015(h) for the Montgomery GI Bill-Active Duty program (chapter 30)). Under 38 U.S.C. 3313(h), VA is required to pay the amount of educational assistance for tuition and fees directly to the educational institution. We propose to implement this requirement in § 21.9641(b)(1) and (2) where we state that the lump sum payment of educational assistance for tuition and fees is issued directly to the IHL for the entire term, quarter, or semester that the individual is pursuing the program of education.

In § 21.9641(c)(6), we propose to state that no monthly housing allowance is payable for programs of education pursued for vocational flight training at institutions other than IHLs, pursued exclusively by correspondence, pursued on a half-time basis or less, and pursued while on active duty. This would reflect that the statutory provisions applicable to those programs, including 38 U.S.C. 3313(e) with regard to programs pursued while on active duty, do not authorize a monthly housing allowance.

f. Section 104—Educational Assistance for Programs of Education Pursued on a Half-Time Basis or Less

Section 104 of Public Law 111–377 amended 38 U.S.C. 3313(f), effective August 1, 2011, to add a new provision for determining the amounts of educational assistance payable to individuals enrolled in training on a half-time basis or less and to provide that the new provision is applicable to all individuals, whether for educational pursuit while on active duty, pursuit of programs of education leading to degrees, or pursuit of programs of education other than programs leading to degrees (non-degree programs). The new provision provides that the amount of assistance payable is the lesser of: (1) the actual net cost for in-State tuition and fees assessed by the institution after the application of any waiver of, or reduction in, tuition and fees and any scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution and specifically designated for the sole purpose of defraying tuition and fees; or (2) the amount of such assistance after application of the proportionate-reduction provisions found in section 3313(c)(2) through (7).

We propose to implement section 104 in § 21.9641(b)(1) and (2), which would be applicable beginning August 1, 2011. Because section 104 requires payment for pursuit of programs of education leading to degrees and non-degree programs on a half-time basis or less in the same amount we are required to pay pursuant to section 102 for pursuit of programs of education leading to a degree on more than a half-time basis at a public, non-public, or foreign IHL, § 21.9641(b)(1) and (2) would be applicable to payments to individuals training in pursuit of programs of education leading to degress at less than half time as well as individuals training at more than half time. Payments to individuals training in pursuit of non-degree programs at less than half time are also covered in § 21.9641(b)(1) and (2), as explained below discussing the section 105 amendments.

With regard to active duty members, although the net cost for in-State tuition and fees would be payable beginning after March 4, 2011, to active duty

members pursuing a program of education leading to a degree on a more than half-time basis pursuant to section 103, we would not pay active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program this new net cost rate until August 1, 2011. Until August 1, 2011, we would continue to pay active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program the rate we paid all active duty members prior to the change in law on August 1, 2011, when section 104 requires payment of the new rate for active duty members pursuing a program of education on a half-time basis or less and active duty members pursuing a non-degree program. We propose to specify the continuance of the rate we paid all active duty members for active duty members pursuing a program of education leading to a degree on a half-time basis or less for the period from March 5, 2011, through August 1, 2011, in § 21.9640(d)(3). We propose to specify the continuance of the rate we paid all active duty members for active duty members pursuing a non-degree program for the period from March 5, 2011 through August 1, 2011, in § 21.9640(d)(4).

g. Section 105—Educational Assistance for Programs of Education Other Than Programs of Education Leading to a Degree

Section 105 of Public Law 111–377 amended section 3313(b) to remove language that limited the provision of educational assistance under the Post-9/11 GI Bill to programs of education pursued at IHLs. This change allows pursuit of non-college degree programs ''approved for purposes of chapter 30.'' *See* 38 U.S.C. 3313(b). Section 105 also added a new 38 U.S.C. 3313(g) to allow payment of educational assistance for approved programs offered at educational institutions other than IHLs. In §§ 21.9715, 21.9735, 21.9740, 21.9750, and 21.9765, we propose to amend the existing regulations to authorize pursuit of non-college degree programs at non-IHLs and remove language that limits pursuit of non-college degree programs to only those offered by an IHL. In these sections, we propose to remove the term ''institution of higher learning'' and add, in its place, the term ''educational institution.''

Prior to the passage of Public Law 111–377, students pursuing non-college degree programs at IHLs (on a greater-than-half-time basis) were entitled to payment of the established charges for tuition and fees (not to exceed the maximum amount of the established charges for in-State students at public institutions), a monthly housing stipend, and a books and supplies stipend. Individuals who were entitled to the 100-percent level of such payments were also eligible to participate in the Yellow Ribbon program if the schools they attended participated in this program. With regard to the payment of educational assistance, prior to the passage of Public Law 111–377, there was no distinction between an individual pursuing a degree program at an IHL and an individual pursuing a non-college degree program at an IHL.

Neither section 3313(c) nor section 3313(g) addresses the level of payment of educational assistance for pursuit of a non-college degree program at an IHL on a greater than half-time basis. In general, we view the purpose of the amendments made by Public Law 111–377 as expanding the universe of programs for which educational assistance may be paid under the Post-9/11 GI Bill (as it did by permitting payment for on-the-job and flight training programs at non-IHL schools, for which payment was previously not permitted). Therefore, based on our interpretation that Public Law 111–377 is meant to expand the universe of programs available, we construe section 105 in a way that does not stop previously authorized payment of educational assistance to individuals who may have already made substantial investments, in terms of time and effort, in pursuit of non-college degrees at IHLs. Also, and again based on our view of Public Law 111–377 as expanding the availability of educational assistance, we construe section 105 in a manner that does not limit a student's choice of the type of school he or she may wish to attend. Therefore, we conclude that VA retains the authority to pay educational assistance for the pursuit of non-college degree programs at IHLs in the same way we had been paying educational assistance for the pursuit of non-college degree programs at IHLs prior to the passage of Public Law 111–377. Because we had been paying educational assistance for the pursuit of non-college degree programs at IHLs in the same manner as we had been paying educational assistance for the pursuit of degree programs at IHLs prior to the passage of Public Law 111–377, we propose to continue to pay individuals pursuing a non-college degree program at an IHL in the same manner as we pay individuals pursuing a degree program at an IHL. Therefore, § 21.9641(b)(1) and (b)(2), specifying the amounts of tuition and fees payable beginning August 1, 2011, would be applicable to payments for pursuit of all programs of education, whether degree or non-college degree.

New 38 U.S.C. 3313(g)(3)(A), as added by section 105 of Public Law 111–377, provides, effective October 1, 2011, that the amount of educational assistance to be paid to an individual enrolled in a certificate or other non-college degree program at an educational institution other than an IHL on more than a half-time basis is the lesser of the actual net cost of in-State tuition and fees (less any waiver of, or reduction in, tuition and fees and any amount provided directly to the institution on behalf of an eligible student for the sole purpose of defraying tuition and fees), or $17,500 (the cap) for the academic year beginning on August 1, 2011 (or the cap as adjusted annually for any subsequent academic year beginning on August 1). We propose to implement this payment requirement in § 21.9641(b)(3) by providing that VA will make a lump sum payment directly to the institution in an amount of educational assistance payable for an individual enrolled at more than half-time, in a certificate or non-college degree program at an educational institution other than an IHL.

New section 3313(g)(3)(A) also provides, effective October 1, 2011, that individuals enrolled in a certificate or other non-college degree program at an educational institution on more than a half-time basis are eligible for a monthly housing stipend and a monthly stipend for books, supplies, and equipment. The amount of the monthly housing stipend is calculated in the same fashion as it is for individuals pursuing programs of education leading to a degree at IHLs. We propose to implement this payment requirement in § 21.9641(c)(3). The amount of the monthly stipend for books, supplies, and equipment is $83 each month, prorated for a partial month. We propose to implement this payment requirement in § 21.9641(d)(2). This amount for books, supplies, and equipment is further limited to a proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed. We proposed to implement this payment requirement in generally applicable § 21.9641(a), which provides the applicable percentage of the maximum amounts payable.

Section 3313(g)(3)(B), as added by Public Law 111–377, section 105(b), provides for a monthly housing stipend and a stipend for books, supplies and

equipment for individuals pursuing a full-time program of apprenticeship or other on-the-job training. Paragraph (B) requires, effective October 1, 2011, the amount of the monthly housing stipend to be 100 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the first six-month period of pursuit of the program, 80 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the second six-month period of pursuit, 60 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the third six-month period, 40 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of the fourth six-month period, and 20 percent of the applicable amount of the monthly basic allowance for housing payable under 37 U.S.C. 403 for each month of pursuit of the program for any subsequent months of training. Paragraph (B) requires, effective October 1, 2011, the amount of the monthly stipend for books, supplies, and equipment to be $83 for each month of training, or a prorated amount for a partial month of training.

The amounts of the monthly housing stipend and stipend for books, supplies, and equipment for individuals entitled to educational assistance by reason of section 3311(b)(3) through (8) must be further limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed. The amounts of these monthly stipends must be reduced even further if a individual fails to complete 120 hours of training in any month. Pursuant to new 38 U.S.C. 3313(g)(3)(B)(iv), the reduced amount must be determined by multiplying the otherwise payable amount for that month by the number of hours worked rounded to the nearest 8 hours, and then by dividing that amount by 120, and lastly rounding that final amount to the nearest hundred. For example, with regard to the monthly housing stipend, if a student completes 96 hours of training for a month in which he or she is eligible to otherwise receive a $1,000 monthly housing stipend, the student must receive $800 (which is $1,000 multiplied by 96 hours, and divided by 120). We propose to implement the monthly housing allowance payment requirement for individuals pursuing a full-time program of apprenticeship or other on-the-job training in § 21.9641(c)(5), and the book stipend payment requirement in § 21.9641(d)(2).

New 38 U.S.C. 3313(g) allows payment of educational assistance for approved programs other than programs leading to a degree offered at educational institutions other than IHLs, which would include apprenticeships and on-the-job training programs. Therefore, we propose to provide in newly added § 21.9626(c), the beginning dates of an award or increased award of educational assistance for approved programs, including apprenticeships and on-the-job training programs, but not for a licensing or certification test, a national test for admission, or a national test for credit.

Section 3313(g)(3)(C) and (D), as added by Public Law 111–377, section 105(b), provides, effective October 1, 2011, that the amount of educational assistance to be paid to an individual enrolled in a program of flight training or of training pursued exclusively by correspondence, respectively, at either an IHL or an institution other than an IHL on more than a half-time basis is the lesser of the actual net cost of tuition (in-State tuition for flight training) and fees (less any waiver of, or reduction in, tuition and fees and any amount provided directly to the institution on behalf of an eligible student for the sole purpose of defraying tuition and fees) or $10,000 (the cap) for flight training, or $8,500 (the cap) for training pursued exclusively by correspondence, for the academic year beginning August 1, 2011 (or the respective cap as adjusted annually for any subsequent academic year beginning on August 1). This amount is further limited to the same proportionate percentage applicable to the monthly amounts payable to an individual under section 3313(c)(2) through (7), which is based on the aggregate amount of active duty service completed.

We propose to specify in new § 21.9641(b)(5) that, effective after September 30, 2011, a lump sum of this amount of assistance would be paid directly to the institution on behalf of the individual enrolled in a flight training program at any institution, regardless of whether it is an IHL. We propose to require that an individual complete a certification for training before VA would issue payment for the flight training because section 3313(g)(4)(C)(ii) adds this requirement. We propose to specify in new § 21.9641(b)(6) that, effective after September 30, 2011, assistance would be paid quarterly on a pro rata basis for lessons completed directly to the educational institution on behalf of the individual enrolled in a program of training pursued exclusively by correspondence at any institution, regardless of whether it is an IHL, since this frequency of payment is required by section 3313(g)(4)(D).

Section 3313(g)(5) requires that we charge entitlement for individuals pursuing non-college degee programs at institutions other than IHLs based on the amount paid as a percentage of the otherwise applicable annual rate. The rules regarding the charge to entitlement for individuals pursuing certificate or other non-degree programs at educational institutions would be located in § 21.9561(b). In § 21.9561(b)(1), we propose to provide that when VA pays tuition and fees to the non-college degree institution, the individual would be charged entitlement equal to the numbers of months and the corresponding fraction measured in days, determined by dividing the total amount paid by the amount equal to 1/12th of the applicable amount for the academic year, which is $17,500 (the cap) for the academic year beginning on August 1, 2011 (or the cap as adjusted annually for any subsequent academic year beginning on August 1). In § 21.9561(b)(2), we propose to provide that for any period VA does not pay net costs to the non-college degree institution, but pays a monthly housing allowance or an increase (''kicker'') to the individual, that individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period that the individual received a monthly housing allowance or an increase (''kicker''). In § 21.9561(b)(3), we propose to provide that for any period VA does not pay net costs to the non-college degree institution, or a monthly housing allowance or an increase (''kicker'') to the individual, but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

Although section 3313(g)(5) sets out the entitlement charges for individuals pursuing non-college degree programs at institutions other than IHLs, it omits the entitlement charges for apprenticeships and on-the-job training, flight training, and correspondence training. In the absence of guidance on how to charge entitlement for individuals pursuing flight and correspondence training, we propose to apply the same rules provided in section 3313(g)(5) because tuition is similarly charged for individuals pursuing certificate or other

non-degree programs at institutions other than IHLs and individuals pursuing flight and correspondence training. Specifically, in § 21.9561(d) and § 21.9561(e), we propose to provide that an individual will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made for flight training and correspondence training occurring after July 31, 2011.

However, because we do not pay tuition and fees for individuals pursuing apprenticeships and on-the-job training under chapter 33, we cannot apply the entitlement charges rules in section 3313(g)(5) to individuals pursuing apprenticeships and on-the-job training under chapter 33. Instead, we propose to charge entitlement for training assistance allowance under 38 U.S.C. 3687(e) for individuals pursuing apprenticeships and on-the-job training under chapter 33. We are aware that the applicable statutes might be understood to preclude charging entitlement under section 3687(e) for individuals pursuing apprenticeships and on-the-job training under chapter 33. Section 3323(a)(1) makes 38 U.S.C. 3034(a)(1) applicable to the provision of educational assistance under chapter 33, and 38 U.S.C. 3034(a)(1) makes most of the provisions of chapter 36 applicable to the provision of educational assistance under chapter 30, with an explicit exception of section 3687. It arguably follows from section 3034 that we may not apply section 3687 to the provision of educational assistance under chapter 33. However, VA believes that the relevant statutes are best understood to permit application of section 3687(e) to the provision of educational assistance under chapter 33. Congress has consistently either specified the methodology for computing charges against entitlement or expressly stated that there will be no charge to entitlement (*see, e.g.,* 38 U.S.C. 3314(d), 3318(e)). Its failure to do either section 3323 suggests that there is a gap in the statute VA must fill. We believe that the best interpretation of the statute is that there should be a charge against entitlement. Section 3312(a) of title 38, U.S.C., makes clear that educational assistance is limited to 36 months, and, absent an express provision that benefits are not charged against entitlement, providing benefits without any charge to entitlement would appear to be inconsistent with the overall statutory scheme. We believe it is more likely Congress intended that there be a charge against entitlement, but failed to specify the methodology. Therefore, it is reasonable to apply the entitlement charges rules in section 3687(e) to individuals pursuing apprenticeships and on-the-job training under chapter 33.

According to section 3687(e), an individual is charged entitlement for each month an individual is paid a training assistance allowance at a rate equal to the ratio of the training assistance allowance for the month to the monthly educational assistance allowance payable for full-time enrollment in an educational institution. For the first six months of training, we propose to pay a monthly training assistance allowance to individuals pursuing apprenticeships and on-the-job training under 38 U.S.C. 3313(g)(3)(B) at the same rate as the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403, which is the same as the rate of the monthly educational assistance allowance payable for full-time enrollment in an educational institution; for the second six months of training, we propose to pay 80% of that amount; for the third six months of training we pay 60% of that amount; for the fourth six months of training, we propose to pay 40% of that amount; and for any month after the first 24 months of training, we propose to pay 20% of that amount. Accordingly, for the first six months of training, the ratio of the training assistance allowance to the educational assistance allowances would be one month, and for subsequent periods of training, the ratio would be the applicable portion of a month. We propose to provide these rules for entitlement charges for apprenticeships and on-the-job training occurring after July 31, 2011, in new § 21.9561(c).

In § 21.9641(e), we propose to provide notice that VA will publish the maximum amount of tuition and fees payable each academic year in the ''Notices'' section of the **Federal Register** and on the GI Bill website. We propose to add this notice provision to provide the public with efficient notification of the changes to the maximum amount of tuition and fees.

We propose to use the term ''educational institution'' in §§ 21.9601, 21.9626, 21.9636 and 21.9681. We propose to also define in § 21.9505 and § 21.9506 the term ''educational institution'' as having the same meaning as the term ''institution of higher learning,'' as that term is defined in § 21.4200(h). Prior to August 1, 2011, we referred to this type of institution solely as an institution of higher learning whereas now we would use that term and ''educational institution'' interchangeably.

Prior to the passage of Public Law 111–377, payment of Post-9/11 GI Bill benefits for individuals to pursue training at non-college degree programs was not authorized, although payment of educational benefits may have been authorized under other benefit programs, such as the Montgomery GI Bill program. Therefore, in 38 CFR 21.9590(d), we decided to pay for non-college degree programs on behalf of individuals who had relinquished another benefit to receive Post-9/11 GI Bill benefits, at the rate payable under the relinquished benefit. Because Public Law 111–377 authorized payment of training pursued at non-college degree programs after July 31, 2011, a provision such as § 21.9590(d) is not necessary for training pursued after July 31, 2011. Therefore, we propose to omit a provision, similar to § 21.9590(d), permitting payment for pursuit of non-college degrees at other than IHLs on behalf of individuals who had relinquished another benefit to receive Post 9/11 GI Bill benefits, in new § 21.9591, which covers approval of programs of education for training that begins on or after August 1, 2011, similar to § 21.9590 for approval of programs for training that occurs prior to August 1, 2011.

h. Section 106—Determination of Monthly Housing Stipend Payments for Academic Years

Section 106 of Public Law 111–377 added 38 U.S.C. 3313(i), which requires, effective August 1, 2011, that any monthly housing stipend payable under section 3313 during the academic year beginning on August 1 of each calendar year must be determined using rates for basic allowances for housing payable under 37 U.S.C. 403, in effect as of January 1 of such calendar year. We propose to add this requirement in § 21.9641(c)(7).

VA has been paying the monthly housing stipend to individuals attending residence courses in locations not identified with a ZIP code as if they were attending foreign institutions. However, this has resulted in inequities in payment. For the reasons we provided in the discussion of section 102(b) above, we propose to state in § 21.9641(c)(1)(ii) that, on or after August 1, 2012, we will use the ZIP code or locality code, whichever may be applicable, for all, or a majority, of the area of the institution in which the individual is enrolled when determining the monthly housing

allowance payable for residence training at an IHL located in a state.

i. Section 107—Availability of Assistance for Licensure and Certification Tests

Section 107 of Public Law 111–377 amended 38 U.S.C. 3315, effective August 1, 2011, by removing the one-time limit on the use of Post-9/11 GI Bill benefits to pay for a single licensure or certification test. Under current section 3315, an individual can receive payment for an unlimited number of licensure and certification tests, however, the amount payable cannot exceed the least of: $2,000; the amount charged for the test; or the amount of educational assistance corresponding to the remaining entitlement at the time of payment for the test. We propose to provide, in § 21.9667, for reimbursement for any number of licensing and certification tests taken after July 31, 2011, limited to the least of the licensing or certification test fee, $2,000, or the amount equal to the amount of entitlement to educational assistance available at the time of payment for the test.

In proposed § 21.9626(a)(2), we propose to include the same requirements included in § 21.9625—that VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009, while the test is approved under 38 U.S.C. chapter 36, while the individual is eligible for such educational assistance, and if the claim for reimbursement of the cost of the test is received within 1 year of the test. We would include these same requirements in § 21.9626 because they continue to be applicable after July 31, 2011, but, because they are applicable beginning on or after August 1, 2009, we propose to include this beginning date requirement in § 21.9626(a)(2).

Section 107 also removed the prohibition on charging entitlement for payment for a test. It requires that the corresponding charge to entitlement for payment for each licensing or certification test taken on or after August 1, 2011, be made at the rate of one month (rounded to the nearest whole month) for each $1,460 paid for the academic year beginning on August 1, 2011, as increased under 38 U.S.C. 3015(h) each academic year beginning on each subsequent August 1. To the extent the calculation results in a rate of less than one-half month, we interpret the statute as requiring an entitlement charge of one month, *i.e.,* a test payment always results in an entitlement charge under section 3315(c).

In § 21.9561(f)(1) and (f)(2)(i), we propose to explain that we would charge entitlement for each payment of educational assistance made for an approved licensing or certification test taken on or after August 1, 2011, and prior to August 1, 2018, by dividing the total amount of the payment by $1,460 (or as increased under 38 U.S.C. 3015(h) for any subsequent academic year beginning on August 1) for the academic year beginning August 1, 2011, or the maximum amount of $2,000 for a licensing or certification test, and rounding the result to the nearest whole month. The charge to entitlement would be at least one month. For example, if an individual receives educational assistance during the academic year beginning August 1, 2011, for taking an approved licensure or certification test that costs $500, VA proposes to make a charge against the individual's entitlement of 1 month ($500/$1460 = 0.34; because there is a minimum charge of one month, this would be rounded to one month).

In 2017, section 108 of Public Law 115–48 further changed the requirements for calculating entitlement charges for licensure and certification tests under the Post 9/11 GI Bill for tests taken on or after August 1, 2018. Section 3315, as amended by section 108 of Public Law 115–48, requires that, for tests taken on or after August 1, 2018, entitlement charges be pro-rated based on the actual amount of the fee charged for the test relative to the rate that is payable for one month. In order to pro-rate the fee charged relative to the rate payable for one month, VA will count each month as 30 days. We propose to calculate the pro-rated charge to entitlement for tests taken on or after August 1, 2018, in § 21.9561(f)(2)(ii) by dividing the total amount of the payment by $1,460, as increased under 38 U.S.C. 3015(h) for the applicable academic years subsequent to August 1, 2011, beginning on August 1, multiplying by 30 and rounding the result to the nearest whole day, instead of to the nearest whole month. The minimum charge to entitlement would be at least one day, since it is the minimum part of a month.

j. Section 108—National Tests

Section 108 of Public Law 111–377 added 38 U.S.C. 3315A to permit individuals to use Post-9/11 GI Bill benefits to pay a limited amount for national tests for admission to IHLs and national tests providing an opportunity for course credit at IHLs taken on or after August 1, 2011. Section 3315A imposes a corresponding charge to entitlement for each test, similar to the charge to entitlement imposed with respect to payment for licensing and certification tests. We propose to implement the requirements of this section in, among other regulations, §§ 21.9626(a)(3), 21.9668, and 21.9681.

In proposed § 21.9626(a)(3), we propose to provide that VA will award educational assistance for the cost of a national test for admission or a national test for credit for an individual who takes such test after July 31, 2011, under the same conditions under which we pay for the cost of licensing and certification tests. We propose to reword one of those conditions to more clearly state that VA will pay for the cost of a test only if a claim for reimbursement is submitted within 1 year of taking the test. In § 21.9668, we propose to specify that the reimbursement an individual could receive for taking a national test for admission or a national test for credit is the lesser of (a) the fee charged for the test or (b) the amount equal to the number of whole months of remaining entitlement available to the individual. We propose to also specify that of the fee charged for the test, we will not reimburse for any optional costs that are not required for the testing process. In § 21.9681(b)(1), we propose to provide that the certification requirements by educational institutions for release of payments do not apply to national tests for admission and national tests for credit.

Because section 108 of Public Law 111–377 amended 38 U.S.C. 3315A to add two additional test types, we propose to add new paragraphs (mm) and (nn) to § 21.4200, which defines terms that apply to subpart P of 38 CFR part 21, containing the regulations for the Post 9/11 GI Bill program, to define the terms ''national test for admission'' and ''national test for credit.'' As stated in proposed § 21.9626(a)(3), these tests must be specifically approved for the GI Bill under the provisions in 38 U.S.C. chapter 36, which is implemented by provisions currently found in § 21.4268. VA has a list of tests that have applied and been approved for reimbursement, and we would reference that list in proposed § 21.4200(mm) and (nn). The list is maintained and can be accessed by visiting the website: *http://inquiry.vba.va.gov/weamspub/buildSearchNE.do.* If the test has not yet been approved or is not contained on this list, the organization administering the test must contact VA about having it approved.

In § 21.9561(f), we propose to charge entitlement for each payment of educational assistance made for an approved national test taken on or after August 1, 2011, and prior to August 1,

2018, in the same manner as we charge entitlement for licensure and certification tests, except there would not be a $2,000 limit per cost of test as there would be with respect to licensure and certification tests.

We propose to add new § 21.9591 to explain the types of programs or courses an individual can pursue on or after August 1, 2011, to be eligible for educational assistance under the Post 9/11 GI Bill. We propose to include in § 21.9591(a)(4) national tests for admission and national tests for credit as types of programs an individual can pursue on or after August 1, 2011, and receive educational assistance under the Post 9/11 GI Bill. We propose to state in § 21.9591(b)(4) that VA would approve a program of education under chapter 33, except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, or for a program consisting of a national test for admission or a national test for credit, only if the individual is not already qualified for the objective of the program.

In new § 21.9601(b), we propose to explain that overcharges or excessive fees by organizations or entities offering national tests may result in disapproval of tests.

As provided in current § 21.9710, an individual's educational assistance is dependent upon his or her pursuit of a program of education, except for an individual pursuing tuition assistance Top-Up or reimbursement for taking an approved licensing or certification test. We propose to revise § 21.9710 to clarify that payment of educational assistance is not contingent upon an individual's pursuit when reimbursement is for a national test. This exception is in addition to the current exceptions of an individual's pursuit of tuition assistance Top-Up and reimbursement for taking an approved licensing or certification test. Furthermore, in proposed § 21.9721(a), we propose to provide that VA does not require organizations or entities offering national tests for admission, national tests for credit, or licensing or certification tests to certify that the individual took the test.

k. Section 109—Continuation of Entitlement to Additional Educational Assistance for Critical Skills or Specialty

Section 109 of Public Law 111–377 added 38 U.S.C. 3316(c) and (d). Section 3316(c) allows individuals entitled to receive an increased amount of educational assistance for critical skills or specialties (''recruitment or retention kickers'' or ''kickers''), pursuant to 38 U.S.C. 3015(d) or 10 U.S.C. 16131(i), from the Department of Defense (DOD) or the Department of Homeland Security (DHS) under the MGIB or the Montgomery GI Bill—Selected Reserve to remain entitled to that increased assistance if the individual has elected to receive Post-9/11 GI Bill benefits in lieu of either the MGIB or the Montgomery GI Bill—Selected Reserve. Under section 3316(c), payments of these kickers are now made on a monthly basis, as opposed to a lump sum for the entire term, quarter, or semester. Under section 3316(c), the amount payable on a monthly basis must be determined by multiplying the monthly amount of the kicker by the individual's rate of pursuit, rounded to the nearest multiple of 10.

In § 21.9650, which provides for continued entitlement to the increased ''kicker'' amount for critical skills or specialties if the individual has elected to receive Post-9/11 GI Bill benefits in lieu of either the MGIB or the Montgomery GI Bill—Selected Reserve, we propose to amend § 21.9650(a)(2) to add that the chapter 33 kicker amount paid to the individual as part of the monthly housing allowance if the individual is entitled to a monthly housing allowance for the period from August 1, 2009, to July 31, 2011, will be paid under § 21.9640(b), and for the period after July 31, 2011, will be paid under § 21.9641(c). Additionally, we propose to amend § 21.9650(b)(2) and (c)(2) to include separate paragraphs applicable to payment for training during different time periods, and amend § 21.9650(b)(3) and (c)(3) to indicate that, after July 31, 2011, payment of the kicker would be made on a monthly basis.

Additionally, we note that section 109 does not require changes to the calculation of payment amounts and the timing of payments for the continued payment of kickers under section 3021 (supplemental educational assistance). The only change we would make to § 21.9655 would be that any increase that is payable for supplemental educational assistance will only be paid to the individual as an increase to the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii), (b)(2)(ii), or § 21.9641(c) for that term, quarter, or semester. We are removing the authority citation to 38 U.S.C. 3316 that appears after paragraph (a) of § 21.9655 and including it at the end of the section. We also note that 38 U.S.C. 3316(d), as added by section 109(b)(1) of Public Law 111–377, directs DOD or DHS, as applicable, to pay for kickers from funds deposited in the DOD Education Benefits Fund or from appropriations available to the DHS, as appropriate. Because this change is an administrative issue for resolution exclusively by the DOD and the DHS, we would not make any changes to VA regulations to implement section 109(b)(1).

l. Section 110—Transfer of Unused Education Benefits

Section 110 of Public Law 111–377 amended 38 U.S.C. 3319, effective August 1, 2011, to permit certain members of the U.S. Public Health Service and the National Oceanic and Atmospheric Administration, in addition to members of the Armed Forces, to transfer Post-9/11 GI Bill benefits to their dependents following completion of minimum duty requirements. It also clarified that the purpose of permitting this transfer is to promote recruitment and retention, and that the individual Secretary concerned (*e.g.,* Secretary of the Army, Secretary of the Navy, Secretary of Health and Human Services, and others) may exercise the authority to allow such transfer when authorized by the Secretary of Defense in the national security interests of the United States.

We propose to amend the introductory text of § 21.9570 to indicate that the regulation would apply for training that occurs before August 1, 2011, and add § 21.9571, to apply to training that occurs after July 31, 2011, which would mostly replicate § 21.9570, but we propose to change ''Armed Forces'' and ''active duty service'' to ''Uniformed Services'' and ''service as a member of the Uniformed Services,'' respectively, each place they appear, and remove ''military'' each time it appears with reference to ''department'' to permit individuals who train with the U.S. Public Health Service and the National Oceanic and Atmospheric Administration after July 31, 2011, to transfer Post-9/11 GI Bill benefits to their dependents. Additionally, in § 21.9571(g)(1), we propose to clarify that any modification of a transfer of entitlement designation, including modification of a beginning date under § 21.9571(d)(1)(iii), will only be effective on or after the date that the modification was submitted, which would be consistent with § 21.9571(g)(2).

m. Section 111—Bar to Duplication of Certain Educational Assistance Benefits

Section 111 of Public Law 111–377 amended 38 U.S.C. 3322 by adding four new paragraphs to bar concurrent receipt of various types of VA educational assistance, effective August

1, 2011. Section 111(a) added section 3322(e) to require an election between educational assistance under 38 U.S.C. 3311(b)(9) (Fry Scholarship program) and under 38 U.S.C. 3319 (Post-9/11 GI Bill benefits based on transferred entitlement). Section 111(b) added section 3322(f) to restrict VA from paying dependency and indemnity compensation or pension based on the death of a parent to an eligible child, or increased rates or additional amounts of compensation, dependency and indemnity compensation, or pension based on the child, on the one hand, and educational assistance under the Fry Scholarship on the other hand. Section 111(c) added section 3322(g) to require a spouse or child to elect to receive transferred Post-9/11 GI Bill benefits under 38 U.S.C. 3319 from only one individual at a time if entitled to receive transferred benefits from more than one individual for the same time period.

Section 111(d) added section 3322(h) to require an individual to elect one program under which to establish eligibility for educational assistance even if the individual may be able to establish eligibility under 38 U.S.C. chapters 30, 32, or 33 and 10 U.S.C. chapters 1606 or 1607 based on a single period of active-duty service. New section 3322(h) also requires a child of a member of the Armed Forces who dies in the line of duty on or after September 11, 2001, while serving on active duty, to elect to establish eligibility for educational assistance under either the Fry Scholarship or under chapter 35 even if the child is eligible for educational assistance based on the parent's death under both programs. New paragraphs (e), (g), and (h) of section 3322 allow VA to determine the form and manner of the required elections.

To implement these requirements, we propose to modify § 21.9690 to indicate that the prohibitions on non-duplication of benefits in § 21.9690 are effective during the period beginning August 1, 2009, and ending July 31, 2011. We propose to also add provisions in proposed § 21.9691, in which we would provide that, after July 31, 2011, an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with various types of educational assistance, *see* proposed § 21.9691(a) (see discussion of section 202 below regarding this provision); that the payment of educational assistance is prohibited to the eligible individual for courses that are paid in full or in part by the Armed Forces while the individual is on active duty service, or for a course or courses that are paid under the Government Employees Training Act, *see* proposed § 21.9691(b); that an individual entitled to educational assistance under both the Fry Scholarship and transferred benefits may not receive educational assistance under both provisions concurrently, *see* proposed § 21.9691(c); that an individual may not receive transferred benefits from more than one individual concurrently, *see* proposed § 21.9691(d); that an individual's receipt of educational assistance under the Fry Scholarship is a bar to subsequent payment of both (i) dependency and indemnity compensation or death pension to the individual once they attain the age of 18 years, or (ii) an increased rate or additional amount of compensation, dependency and indemnity compensation, or pension paid on account of the individual, *see* proposed § 21.9691(e); that an individual who is eligible under 38 U.S.C. chapter 30, 32, or 33 and 10 U.S.C. chapter 1606 or 1607 must elect under which authority such service is to be credited; and that a child of a member of the Armed Forces who, after September 10, 2001, dies in the line of duty while serving on active duty, who is eligible for educational assistance under the Fry Scholarship or 38 U.S.C. chapter 35 based on the parent's death may not receive benefits under both provisions, *see* proposed § 21.9691(h).

We propose to implement section 3322(h) by stating in § 21.9691(h)(1)(ii) that an individual may not request that portions of a single period of service be used to establish eligibility under more than one benefit program. In other words, we propose to prohibit an individual from splitting a single period of service into separate periods and use the separate periods to establish eligibility for different benefit programs. In § 21.9691(h)(1)(i), we propose to require an individual whose period of active duty service meets the requirements to establish eligibility under 38 U.S.C. chapter 30, 32, or 33 and 10 U.S.C. chapter 1606 or 1607 to make an irrevocable election of which benefit program to use to establish eligibility and toward which benefit program to credit service. In § 21.9691(h)(2), we propose to require that a child eligible for educational assistance under § 21.9520(d) and 38 U.S.C. chapter 35 based on the parent's death make an irrevocable election in writing specifying which benefit the child wishes to receive. Although Congress does not explicitly state that an election must be irrevocable, VA finds that the statutory language supports this result. In contrast to section 3322(e) and (g), paragraph (h) does not merely bar ''concurrent receipt'' but instead bars ''duplication of eligibility'' under more than one program, and it provides that the individual ''shall elect . . . under which authority [their] service is to be credited'' or ''shall elect . . . under which chapter to receive . . . assistance.'' VA finds that requiring an election to be irrevocable best meets the requirements concerning the bar on duplication of benefits.

With regard to Post 9/11 GI Bill benefits and duplication of payments, Congress added prohibitions using replicated statutory language from statutes governing payment for other benefit programs (*see* 38 U.S.C. 3033). Congress did not expressly provide any bar to duplication of benefits for the same period of enrollment in the event an individual can establish eligibility for chapter 33 benefits under multiple provisions, such as based on the death of more than one parent, or based on the beneficiary's own active-duty service and a parent's service (either with transferred benefits or Fry Scholarship benefits). However, the statutory structure is most logically construed to preclude concurrent awards of chapter 33 benefits to the same individual. Section 3311(b)(1) through (10) of title 38, U.S.C., provides 10 circumstances under which a person may become an ''eligible individual'' entitled to chapter 33 benefits, 8 of which pertain to the length of the individual's active service, while the other 2 categories involve the Fry Scholarship and Purple Heart recipients. Once an individual attains eligibility under any of those categories, they are entitled to payments under 38 U.S.C. 3313 for a program of education, with the amount of payment varying depending upon the category under which they attained eligibility. The determination that a person is an ''eligible individual'' under section 3311 is a threshold determination needed to establish eligibility for payments under section 3313. The fact that a person could satisfy two or more of the eligibility categories in section 3311(b)(1) through (10) does not entitle them to more than one award of benefits under section 3313. Indeed, most individuals who qualify under one of the length-of-service categories in section 3311(b)(1) through (8) would also satisfy one or more of the lesser length-of-service standards in those paragraphs. Where an individual meets two or more of the eligibility categories in section 3311(b)(1) through (10), VA proposes to credit them with the

eligibility category resulting in the highest level of payment, but would not grant them multiple awards of chapter 33 benefits. Similarly, if an individual would qualify under one category for two or more independent reasons, as in the case of an individual who could qualify for the Fry Scholarship based on the death of more than one parent, VA proposes to find that they satisfy the threshold eligibility requirement, but would not grant multiple awards of chapter 33 benefits. Granting concurrent receipt of benefit payments under multiple eligibility provisions of the Post-9/11 GI Bill would result in a windfall of benefit payments not contemplated by the statutory scheme.

Accordingly, we propose to add paragraphs (f) and (g) to § 21.9691 to expressly prohibit concurrent receipt of multiple Post 9/11 GI Bill benefits awards simply because an individual may meet more than one of the eligibility requirements in section 3311(b)(1) through (10). Section 21.9691(f) would prohibit an individual from establishing eligibility for the Fry Scholarship under § 21.9520(d) based on the deaths of more than one parent. Section 21.9691(g) would prohibit an individual from concurrently establishing eligibility for Post 9/11 GI Bill benefits based on his or her own service and someone else's service (*e.g.,* with transferred benefits or Fry Scholarship).

n. Section 201—Extension of Delimiting Dates for Use of Educational Assistance by Primary Caregivers of Seriously Injured Veterans and Members of the Armed Forces

Section 201 of Public Law 111–377 amended 38 U.S.C. 3031(d), 38 U.S.C. 3319(h)(5), and 38 U.S.C. 3512(c), effective August 1, 2011, to extend the delimiting date for individuals eligible for educational assistance under each of these chapters to use the educational assistance if they are designated caregivers of disabled veterans or servicemembers and are unable to pursue a program of education because of responsibilities associated with this designation. Implementation of the new provisions will be the subject of a separate rulemaking.

o. Section 202—Limitations on Receipt of Educational Assistance Under National Call to Service and Other Programs of Educational Assistance

Section 202 of Public Law 111–377 amended 38 U.S.C. 3322 and 3681, effective August 1, 2011, to add the National Call to Service (NCS) program (10 U.S.C. 510) to the list of programs under which an individual may not concurrently receive benefits, which bars concurrent receipt of benefits under the NCS program and other listed programs.

Section 21.3022 of title 38, CFR, bars concurrent receipt of benefits under chapter 35 and other chapters listed in sections 3322 and 3681; § 21.5022 bars concurrent receipt of benefits under chapter 32 and other chapters listed in those sections; § 21.7143 bars concurrent receipt of benefits under chapter 30 and other chapters listed in those sections; and § 21.7642 bars concurrent receipt of benefits under 10 U.S.C. 1606 and other chapters listed in those sections. Section 21.4022 bars concurrent receipt of assistance allowances under multiple programs. Section 21.9635(w) also bars concurrent receipt of educational assistance allowance under multiple programs. We propose to amend §§ 21.3022, 21.4022, 21.5022, 21.7143, 21.7642, and 21.9635(w) by adding 10 U.S.C. 510 to the list of programs in these regulations to bar concurrent receipt of benefits under the NCS program and various other programs. We propose to specify in each regulation that the bar on concurrent receipt of benefits under the NCS program and other programs would be effective August 1, 2011, as required by law.

Section 21.9690 bars concurrent receipt of benefits under chapter 33 and other chapters listed in this section. Instead of adding 10 U.S.C. 510 to the list of programs in § 21.9690, we propose to add 10 U.S.C. 510 to the list of programs in new § 21.9691, prohibiting concurrent receipt of benefits under chapter 33 and other chapters listed in this section and applicable to training pursued after July 31, 2011, to bar concurrent receipt of benefits under the NCS program and various other programs.

p. Section 203—Approval of Courses

Section 203(a)(1) of Public Law 111–377 amended 38 U.S.C. 3672(b) to provide for constructive approval for accredited standard college degree programs at public or not-for-profit private institutions, certain flight training courses, and apprenticeship programs. Section 203(c) of Public Law 111–377 amended 38 U.S.C. 3675(a) to provide authority for a State approving agency or the Secretary to approve accredited programs (degree and non-college degree) at proprietary for-profit institutions. Prior to the amendment, section 3675 provided approval criteria for all accredited degree and non-college degree programs (regardless of whether the program was offered by a public, proprietary for-profit, or proprietary not-for-profit institution).

Section 203(a)(1) of Public Law 111–377 amended 38 U.S.C. 3672 to provide that ''accredited standard college program[s]'' offered by public and proprietary not-for-profit educational institutions are ''deemed to be approved'' (essentially meaning that they are exempt from all approval criteria except those limitations in 38 U.S.C. 3675(b)(1) and (b)(2), 3680A, 3684, and 3696; in other words, these deemed approved programs are exempt from most of the requirements of 38 CFR 21.4253). *See* 38 U.S.C. 3672(b)(2)(A)(i). However, because section 3672(b)(2)(A)(i) explicitly only applies to ''standard college degree program[s],'' the ''deemed to be approved'' status does not apply to non-college degree programs at public or proprietary not-for-profit educational institutions. Furthermore, Public Law 111–377, section 203(c), amended 38 U.S.C. 3675(a)(1) by striking ''A State approving agency may approve the courses offered by an educational institution'' and inserting ''The Secretary or a State approving agency may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions.'' Prior to this amendment, section 3675 placed approval requirements on all accredited programs of education. *See* 38 U.S.C. 3675(a)(1) (2010) (stating ''A State approving agency may approve the courses offered by an education institution when—'' without any further qualifiers on either ''courses'' or ''educational institutions''; therefore, the section applied to all courses at all educational institutions). However, due to the Public Law 111–377 amendments, only proprietary for-profit educational institutions were explicitly subject to the approval requirements of section 3675. *See* 38 U.S.C. 3675(a)(1) (2011) (''. . . may approve accredited programs (including non-degree accredited programs) offered by proprietary for-profit educational institutions when—'').

The limitations of Public Law 111–377—accredited college degree programs at public and proprietary not-for-profit IHLs are ''deemed to be approved'' while section 3675 approval requirements only explicitly apply to proprietary for-profit educational institutions—left a hole in coverage concerning the statutory approval requirements of non-college degree programs at public or proprietary not-for-profit educational institutions.

With regard to liberalized approval criteria for programs of study at IHLs, it

is important to note that section 203 only specifically addressed standard college degree programs at IHLs. It is silent with regard to non-college degree programs at IHLs. This change, in combination with the amendment of 38 U.S.C. 3675 to only control programs offered by for-profit proprietary IHLs, left no statutory provisions governing the approval of accredited non-college degree programs at public and proprietary not-for-profit IHLs.

However, the enactment of section 408 of Public Law 114–315 remedied this shortcoming by amending 38 U.S.C. 3675(a)(1) to provide for the approval criteria of accredited non-college degree programs offered by public and proprietary not-for-profit IHLs. Section 3675(a)(1) was amended by striking ''The Secretary or a State approving agency'' and inserting ''A State approving agency, or the Secretary when acting in the role of a State approving agency,'' and by striking ''offered by proprietary for-profit educational institutions'' and inserting ''not covered by section 3672 of this title.'' As a result of this amendment, accredited non-college degree programs at public and proprietary not-for-profit IHLs are now subject to the approval requirements of section 3675. Thus, State approving agencies, or the Secretary when acting as a State approving agency, are required to determine the approval requirements of non-college degree programs at public or proprietary not-for-profit educational institutions.

We propose to amend § 21.4253 to clarify that accredited standard college degree courses at proprietary for-profit educational institutions and accredited non-college degree courses offered at either proprietary for-profit institutions or public or proprietary not-for-profit institutions would be subject to § 21.4253's approval criteria.

In § 21.4150(f), we propose to provide that accredited programs of education leading to a standard college degree offered at a public or proprietary not-for-profit IHL, flight training courses approved by the Federal Aviation Administration offered by a certified pilot school possessing a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141, registered apprenticeships, programs of education leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating, and licensure tests offered by a Federal, State, or local government are deemed approved for VA benefits.

We propose to modify § 21.4259 by replacing ''State approving agency'' each place it appears in paragraphs (a) and (b)(1) and adding, in each place, ''State approving agency or the Secretary'' to make it consistent with 38 U.S.C. 3679 and 3689. We propose to also amend § 21.4263 to clarify requirements for approval of flight programs and provide that certain flight training courses, including those pursued with chapter 33 benefits, are deemed approved under chapter 33, and amend § 21.4235 to provide that flight training is approvable under certain conditions. Further, we propose to amend § 21.4268 to provide that licensure tests offered by a Federal, State, or local government are deemed approved under chapter 33.

Section 203(b) of Public Law 111–377 added 38 U.S.C. 3673(d) to authorize the use of State approving agencies for compliance and oversight activities without regard to whether the Secretary or the State approving agency approved the courses offered in the State concerned. Section 310 of Public Law 115–48 amended section 3673(d) to provide that the Secretary may use the services of a State approving agency to conduct ''compliance and risk-based surveys and other such oversight purposes.'' We propose to add a requirement in § 21.4151 that SAAs perform compliance and risk-based surveys and oversight without regard to whether a program was deemed approved or approved by the Secretary or SAA.

q. Section 204—Reporting Fees

Section 204 of Public Law 111–377 amended 38 U.S.C. 3684(c), effective October 1, 2011, to require educational institutions to use fees paid after January 4, 2011, to make certifications or otherwise support programs for veterans. We propose to revise § 21.4206 to add this new requirement for educational institutions in § 21.4206(e)(3). We propose to also amend § 21.4206 to include references to 10 U.S.C. 510 and 10 U.S.C. chapter 1607. Although these programs are not explictly listed in 38 U.S.C. 3684, certifications under these benefit programs are nonetheless authorized reporting fees under 10 U.S.C. 510(h)(2)(B) and 10 U.S.C. 16166(b) and were previously inadvertently omitted from the existing regulation governing the payment of reporting fees to educational institutions. These chapters would also be included in revised § 21.4206 showing the new requirement for educational institutions with regard to use of fees for certifications and support for veterans programs.

Additionally, we propose to add in § 21.4206(b) that when computing reporting fees for institutions, VA will not count individuals whose only receipt of educational assistance during a calendar year was tuition assistance Top-Up under 38 U.S.C. chapter 30, rural relocation payment, or reimbursement for a national test for admission, national test for credit, or a licensing or certification test. The exclusion of tuition assistance Top-Up payments is merely maintaining the same limitation currently found at § 21.4206(b). The exclusion of the additional categories of payments is because these payments do not require certifications. As such, payments under 38 U.S.C. 3684 would be inappropriate because annual reporting fees payments are ''in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticeship training committee is required to submit to the Secretary by law or regulation.'' Since there is no required certification, there should be no ''in lieu of'' reporting fee.

We note that the rates that are currently listed in § 21.4206 and that would be listed in proposed § 21.4206 are and would continue to be outdated. We plan to further revise § 21.4206(b) in a separate rulemaking to address the increase in reporting fees authorized by section 204 of Public Law 111–377 and section 304 of Public Law 115–48. VA will, of course, pay the rates authorized by statute, notwithstanding any contrary provisions in regulations pre-dating the current statute.

r. Section 205—Election for Receipt of Alternate Subsistence Allowance for Certain Veterans With Service-Connected Disabilities Undergoing Training and Rehabilitation

Section 205 of Public Law 111–377 amended 38 U.S.C. 3108(b), effective August 1, 2011, to permit veterans entitled to a subsistence allowance under 38 U.S.C. chapter 31 (VA's Veteran Readiness and Employment Program) who also are eligible for educational assistance under 38 U.S.C. chapter 33 (the Post-9/11 GI Bill) to elect to receive a payment in an amount equal to the applicable monthly amount of basic allowance for housing payable under 37 U.S.C. 403 in lieu of the otherwise applicable subsistence allowance payable under chapter 31. The rules implementing this provision of law were addressed in the interim final rule published in the **Federal Register** on August 1, 2011 (Veteran Readiness and Employment Program—Changes to Subsistence Allowance, 76 FR 45697), which was adopted as a final rule on January 12, 2012 (77 FR 1872).

Those rules are currently codified in 38 CFR 21.260(c) and 21.264(b). This election was authorized as an incentive to enroll in the chapter 31 program to benefit from other services available under this program. *See* 76 FR 45697.

Section 3322(a) of title 38, U.S.C., prohibits VA from paying benefits under both chapter 33 and chapter 31 concurrently. Thus, an individual entitled to benefits under both chapters must elect one chapter under which to receive benefits. While an election in this situation is mandatory, the timing of the election is not specified. VA policy allowing an individual to switch education benefit programs during the enrollment term was in place before Post-9/11 GI Bill education benefits were paid in lump sums. At that time, a switch in education benefit programs during the enrollment term did not create problems because benefit payments were paid monthly rather than in one lump sum. Now that VA is required to make lump sum payments at the beginning of the term under 38 U.S.C. 3313(d), if an individual switches from chapter 33 to chapter 31 during the term, because a lump sum was already paid under chapter 33, there may be an overpayment that the individual is responsible to pay. Under current § 21.9635(w), when an individual switches from chapter 33 to chapter 31, we terminate chapter 33 benefits on the first day of the enrollment period during which the individual makes the election to switch, creating an overpayment because the lump sum has already been paid out.

To avoid the creation of an overpayment when an individual switches from chapter 33 to chapter 31 during a term, we propose to change the rule regarding termination of educational assistance when an individual elects to switch benefit programs. We propose to add § 21.9636(w)(2) to require the termination of educational assistance under chapter 33 to be effective the first day of the enrollment period subsequent to the one during which the individual requests to receive educational assistance under chapter 31. This change would prevent overpayments because payment of chapter 31 benefits would not cover the same period covered by the lump sum payment of chapter 33 benefits, but would begin the following term. Further, for administrative efficiency, we propose to stipulate in § 21.9636(w)(3) that an eligible individual may only request a change in receipt of benefits from chapter 33 to chapter 31 once per term, quarter, or semester.

Similarly, to avoid the creation of an overpayment if an individual elects to switch from chapter 31 to chapter 33 during a term, we propose to add, in § 21.9626(l)(2)(ii), that VA will begin paying net cost of tuition and fees, and the books and supplies stipend, under chapter 33 beginning the first day of the enrollment period subsequent to the enrollment period during which the individual requests to receive educational assistance under chapter 33. Because the chapter 31 subsistence allowance would have been paid through the end of a month (and not in a lump sum for the entire term), we propose to state, in § 21.9626(l)(2)(i), that we will begin paying the monthly housing allowance under chapter 33 beginning the first day of the month following the date the individual requests to receive educational assistance under chapter 33.

s. Section 206—Modification of Authority To Make Certain Interval Payments

Section 206 of Public Law 111–377 amended 38 U.S.C. 3680(a), effective August 1, 2011, to remove VA's authority to make interval payments under its educational assistance and Veteran Readiness and Employment Program. While the law allows VA to continue to make payments for non-training periods under certain circumstances (*i.e.,* when schools are temporarily closed under an established policy based on an Executive Order of the President or due to an emergency situation, including a strike), the total number of weeks that VA may continue to make payments in any 12-month period may not exceed 4 weeks.

We propose to revise the heading of § 21.4138(f) to indicate that, prior to August 1, 2011, there would be no changes in payment of allowances for intervals and temporary school closings and add a new paragraph (g) to eliminate interval payments beginning August 1, 2011, and limit payment of allowances during temporary school closings to 4 weeks in any 12-month period. We would not include in new paragraph (g) the requirement in current paragraph (f)(6) that if the reason for the closing is due to a strike that lasts more than 30 days, the Education Service Director would make the determination whether to deny payment. Similar to current paragraph (f)(6)(2), we propose to allow in new paragraph (g)(4) for the administrative review of decisions concerning whether a school closing is permanent or temporary. We propose to also add § 21.9681(b)(7) to provide that VA may continue to make payments during a temporary school closing. We plan to further revise § 21.9681(b) in a separate rulemaking to implement section 109 of Public Law 115–48, which authorizes payment of housing allowances for a certain period following a permanent closure. VA will, of course, continue to pay the monthly housing allowance to eligible individuals for a limited period following a permanent school closure, pursuant to the current statute.

t. Other Clarifications and Modifications

In addition to the changes we propose to make to implement Public Law 111–377, we propose to clarify other provisions by adding language or simply re-wording language. We propose to also make technical changes to update our regulations, add provisions that were previously inadvertently omitted, and remove references to provisions that no longer exist.

Section 309 of Public Law 115–48 added 38 U.S.C. 3684(a)(4) requiring courses that begin seven or fewer days after the first day of the academic term be treated as if they began on the first day of the academic term for purposes of reporting enrollment under section 3684. In proposed § 21.9626(b)(2) and (3), we propose to provide that resident courses starting within seven calendar days (or one calendar week) of the first scheduled date of classes for an academic term will be considered to have begun on the first scheduled date of the term.

In §§ 21.4002(a), 21.4150(f), 21.4200(oo), 21.4259, 21.9735 and 21.9750, we propose to make several minor changes—removing language, adding language, or re-wording existing language, or reorganizing the section—to clarify the current meanings but would not change any of the substantive meanings of the sections. Specifically, in § 21.4002(a), we propose to remove the reference to §§ 19.192 and 19.183 because these sections no longer exist. In §§ 21.4150(f)(1) and 21.4259, among other changes, we propose to replace the word ''course'' with the term ''program of education,'' which would not change the substance of this provision because a course is a component of a program of education. In § 21.4200(oo), we propose to specify that the usage of the terms ''we'', ''us'', ''our'' means the United States Department of Veterans Affairs. In § 21.9735, we propose to replace the wording ''individuals and institutions of higher learning'' with the wording ''eligible individuals and educational institutions'' to be consistent with the terminology used in the statutes. In § 21.9750, we propose to replace the wording ''institution of higher learning''

with the wording ''educational institution''.

In § 21.9695, we propose to articulate additional circumstances that we have found in practice that warrant a finding that an educational institution is liable for overpayments to it from VA. We propose to restructure paragraph (b)(3) to clearly enumerate each circumstance. Under current § 21.9695(b)(3), an educational institution is liable for overpayments when an overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual. Under revised § 9695(b)(3), we propose to add that the overpayment of educational assistance paid to the educational institution on behalf of an individual would constitute a liability of the educational institution when a student never attends classes for which he or she was certified (regardless of the reason for non-attendance), completely withdraws from all courses on or before the first day of the certified period of enrollment, or dies during the term; when an educational institution receives a payment for the wrong student, receives a duplicate payment for a student, or receives a payment in excess of the amount certified to VA on the enrollment certification; or when an educational institution submits an amended enrollment certification to correctly report a reduced amount of tuition and fee charges, reduced Yellow Ribbon Program contributions, or reduced amounts for both tuition and fees and Yellow Ribbon Program contributions. In these circumstances, the school would have received money it was not entitled to or was no longer entitled to because the certification that an individual student attended would have been false. The occurrence of any of these circumstances leads to the reasonable conclusion that an educational institution has made an improper student certification and has been unjustly enriched. Hence, it is reasonable to hold the educational institution liable for the amount of overpayment. Further, 38 U.S.C. 3685(b) and 3323, both of which are applicable to chapter 33, give VA the authority to promulgate regulations prescribing the circumstances which would constitute liability of an educational institution.

In § 21.9715, we propose to remove the references to ''§ 21.9640(b)(1)(ii) or (b)(2)(ii)'' and replace it with ''§ 21.9640(b)(1)(ii), (b)(2)(ii), or 21.9641(c), whichever is applicable'' to include the newly added § 21.9641(c). We propose to replace the term ''the institution of higher learning'' with the term ''the educational institution'' in each place it appears in the section and replace the term ''an institution of higher learning'' with the term ''the educational institution'' in paragraph (b)(1). Also, we propose to remove the reference to § 21.9730 because this section does not exist, and we would replace it with § 21.9735.

We propose to reword the provisions in § 21.9645(a)(1)(iii), (b)(1)(ii), and (c) to clarify that, in order for an individual to receive a refund of the chapter 30 contribution under the Post-9/11 GI Bill, the individual must have made a contribution into the Montgomery GI Bill and be in receipt of the monthly housing allowance at the time of entitlement exhaustion. We propose to remove the wording in § 21.9645(a)(1)(iii) ''He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g)'' because some of it is extraneous and replace it with the wording ''He or she is a member of the Armed Forces who is making contributions as provided in § 21.7042(g) towards educational assistance under 38 U.S.C. chapter 30''. By changing the language in § 21.9645(c) from ''will only be paid to the individual who made the contributions as an increase to the monthly housing allowance'' to ''will only be issued to the individual who made the contribution when the individual is in receipt of the monthly housing allowance payable under § 21.9640(b) or § 21.9641(c) at the time his or her entitlement exhausts'', we are clarifying that an individual must be in receipt of the monthly housing allowance at the time of entitlement exhaustion to get a refund.

Additionally, several sections would be updated to reference newly added sections when applicable. The updated sections would include 21.9550, 21.9620, 21.9645, and 21.9715.

In addition, for clarification, we propose to revise the language in § 21.9550(b)(2) to state that an individual who has not used his or her entitlement under chapter 30 and makes an irrevocable election to receive benefits under chapter 33 will be entitled to 36 months of chapter 33 benefits. The language used in the current § 21.9550(b)(2) does not clearly state that an individual is entitled to 36 months of benefits if they have not used or transferred chapter 30 benefits.

Finally, we propose to add the definition and the rules for ''fugitive felons'' since the ''fugitive felons'' provisions, contained in section 505 of Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001 (codified in 38 U.S.C. 5315B), were already implemented in our regulations for chapter 30 benefits but were not included for chapter 33 benefits. The new fugitive felon provisions that we would include in this rulemaking would be merely the reiteration of the provisions mandated by statute. They would not represent any substantively novel policies or practices. We would add the provisions for ''fugitive felons'' in §§ 21.9505, 21.9506, 21.9625, 21.9626, 21.9635 and 21.9636. In §§ 21.9505 and 21.9506, we propose to provide the definition of ''fugitive felon'' as a person identified as such by Federal, State, or local law enforcement officials and who is a fugitive by fleeing to avoid prosecution, custody, or confinement for a felony. This term also includes a person who is a fugitive by reason of violating a condition of probation or parole imposed for the commission of a felony. In §§ 21.9625(m) and 21.9626(m), we propose to state that an award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon. In §§ 21.9635(bb) and 21.9636(bb), we propose to state that VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon and that the date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

Additionally, we propose to amend existing regulations and add new regulations to implement policies for determining discontinuance dates. Our current policies and practices function in ways that help to limit a student's debt by reflecting the reality of how schools refund tuition and fees during drop/add periods and by embodying what VA believes to be equitable dispositions for students that are negatively impacted by a mid-term course disapproval that is beyond the control of the student but where the student bears the brunt of the impact. Our amended and new regulations

would reflect our current policies and practices, except for certain proposed changes with respect to the first instance of withdrawal, reductions in rates of pursuit (either during the drop/add period, with mitigating circumstances, or when a punitive grade is assessed), individuals that have a change in active duty status, and individuals that die during a term—in those cases, we would implement slightly modified policies and practices as explained in greater detail below.

Specifically, regarding discontinuance dates, we propose to amend § 21.9635(c)(1) to state that, if a student withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance as of the first day of the term from which the individual withdraws. We propose to amend § 21.9635(c)(2) to state that, if a student withdraws from all courses with mitigating circumstances, withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier, or withdraws from all courses for which a punitive grade is assigned, VA will terminate educational assistance as of the last day of attendance or the official date of change in status. We propose to specify in § 21.9635(d) that VA will reduce educational assistance effective the end of the month during which the reduction occurred. These changes are being made because they are consistent with how we have interpreted the statutory requirements contained in 38 U.S.C. 3680(a) to process such adjustments under the Montgomery G.I. Bill. With respect to withdrawals during the drop/add period, we have historically processed claims in this manner because of the fact that schools generally do not assign punitive grades (or other penalties) during this period and generally there is no need for any justification or mitigating circumstances for withdrawals during this period, and schools generally refund all tuition and fees paid for courses dropped during drop/add periods or within the first 30 days of enrollment. Punitive and nonpunitive grades have, for the purposes of this regulation, the same meaning as they have historically in the admistration of VA educational benefits as defined in 38 CFR 21.4200(j) and (k). It is general practice at most schools that the drop/add period is a time for students to identify whether a course is appropriate for them and to allow the student to withdraw without any negative repercussions. Given the nature of the drop/add period as a time for the student to evaluate a course without the school imposing any negative consequences and that schools generally refund tuition and fees for courses dropped during drop/add periods or within the first 30 days of enrollment, VA does not want a student to incur debt if he or she withdraws from residence training during a drop/add period or within the first 30 days of enrollment, whichever is earlier. Therefore, in these circumstances, we propose to assign the discontinuance date as the last date of attendance for those in residence training, instead of the first day of the term. This change to discontinue payment on the date the student last attends the course will allow the student to not incur a debt since no payment will be made for any period that the student is not in attendance of the course. The same procedures would likewise be codified in proposed § 21.9636(c) and (d).

Furthermore, in § 21.9636(m), we propose to specify that VA will discontinue any monthly payments at the end of the month during which an eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility or the end date of the enrollment period as certified by the educational institution, whichever is earlier. Previously, in § 21.9635(m), we discontinued the monthly payments the first day of the enrollment period for which the individual's tuition and fees were paid by a Federal, State, or local program, the first day of the enrollment period in which the individual was incarcerated, or the beginning date of the award under 38 CFR 21.9625, whichever was the latest. We are changing the discontinuance date to the end of the month or end of the enrollment period, whichever is earlier, because it would lead to more equitable dispositions for students who are negatively impacted by a mid-term course payment discontinuance.

In addition to these changes, we will also add new paragraphs (b) and (c) in § 21.9676 to clarify that incarcerated individuals are not entitled to a monthly housing allowance when they are incarcerated due to a felony conviction, although they may be still entitled to other educational assistance (such as unpaid tuition and fees, as well as books, supplies, and equipment).

Regarding discontinuance dates when a program of education is disapproved during a term, either by the actions of the State approving agency or the Secretary, or in the event that an independent study course loses its accreditation, we propose to add § 21.9636(h), (i), and (x) and state that, in each of these situations, the discontinuance date would be the end of the course or period of enrollment. This would allow the student to complete the course without incurring a debt for the remaining cost of the course. Currently, when a program of education is disapproved by the actions of the State approving agency or the Secretary, the discontinuance date is either the date the payment was first suspended by the Director of the VA Regional Office (if disapproval was preceded by a suspension) or the end of the month in which the disapproval is effective. Additionally, when an independent study course loses its accreditation, the discontinuance date is the effective date of the withdrawal of accreditation by the accrediting agency. This policy would be made because we have found that to do otherwise (*i.e.,* make the discontinuance date the date of disapproval or withdrawal of accreditation) would unfairly punish the student for a situation completely out of the student's control. The student would be forced to either pay for the remainder of the course out-of-pocket (through the assessment and repayment of a VA educational assistance debt) or transfer—as of the date of the disapproval—to a different program. Transferring to a new program is highly problematic for a student, given the limited availability of programs willing to accept an intra-term transfer and the inconvenience to a student of trying to find and transfer to a new program. As a result, many students in such situations would ultimately choose to stay in the disapproved course and incur a debt. We believe our policies should be designed to limit the negative impact on the student when forced to make such a choice; therefore, we feel it is appropriate to pay educational benefits through the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval or withdrawal of accreditation is effective and, thereby, avoid creating a student debt to cover the cost for the remainder of the term.

Additionally, in the event of a student's first instance of withdrawal (proposed § 21.9636(b)) or reduction in the rate of pursuit of a program of education (proposed § 21.9636(d)(1)), we propose to implement a policy change whereby VA would now adjust the eligible individual's educational assistance effective the last date of attendance as opposed to our current policy of adjusting effective the end of the month in which the change occurred. With respect to a change in active duty status affecting an individual's eligibility for a monthly

housing allowance, section 3313(j) requires VA to determine the amount of the monthly housing stipend on a pro rata basis for the period of the month during which an individual is not performing active duty service. Under this provision, in the event of a student's change in active duty status affecting eligibility to a monthly housing allowance—leaving active duty (proposed § 21.9626(k)) or entering active duty (proposed § 21.9636(n)), we propose to implement a policy change whereby we would no longer pay to the end of the month but, instead, would begin or discontinue payments effective the actual date of the change in status. For clarity, we propose to also include § 21.9636(n)(1)(ii) to redirect readers to proposed paragraph (n)(2), as these changes would also apply to those who reduced or terminated training due to active duty service since monthly housing would no longer be payable while on active duty.

Our current policies and practices with regard to these three changes in a student's status (rate of pursuit, entering active duty, or leaving active duty) were designed to help minimize overpayments of monthly benefit payments. The Post-9/11 GI Bill was initially implemented with rudimentary information technology (IT) systems, a heavy reliance on manual benefit calculations and payment authorization processes, and, as a consequence, suboptimal claims processing timeliness. Therefore, the adoption of an ''end of month'' rule, as opposed to specifying the actual date of change, was deemed necessary in order to attenuate the establishment of overpayments due to the lag time inherent with our limited functional capabilities. However, VA's current IT systems now possess features sufficient to handle these changes and the implementation of claims automation functionality has significantly reduced claims processing time. As a result, we now feel that it is appropriate, and more equitable, to begin and discontinue payments based on the actual date of the status change.

We expect that there will be concern that these changes would reduce benefits, especially with regard to monthly housing allowances now being discontinued on the date of entry on active duty as opposed to the end of the month. However, we would like to note that our policy to pay the monthly housing allowance until the end of the month of entry onto active duty service has always been balanced by our policy to not resume payment of the monthly housing allowance until the 1st day of the month following the date on which the individual was discharged. In addition, section 113 of Public Law 115–48 and section 501(c) of Public Law 115–62 also amended section 3313 to ensure equal treatment for all people leaving active duty, regardless of component and ensures proration of everyone's housing on the day the individual enters and leaves active duty service, effective August 1, 2018. Furthermore, although §§ 21.9626 and 21.9636 appear under headings that state the provisions of each section will be effective for any claim submitted after July 31, 2011, this date would not apply to proposed § 21.9626(k) or § 21.9636(b), (d), or (n). These amended provisions would not be a result of Public Law 111–377, therefore, the effective dates as set for the Improvement Act provisions do not apply. The effective date for these sections would be the effective date of the final rule implementing them. These exceptional effective dates are explicitly included in the proposed text of each section. Additionally, it should be noted that current § 21.9625(k) explicitly provides for separate beginning date rules for tuition and fees, monthly housing allowance, and book and supply stipends. These distinct rules were necessary under the statutory structure that existed prior to Public Law 111–377 where tuition and fee payments for active duty servicemembers were different than for veterans and dependents. However, Public Law 111–377 removed the distinctions. VA now pays tuition and fee and book and supply stipends, as required by Public Law 111–377, in the same manner for all beneficiaries, regardless of active duty status. Therefore, the standard rules for beginning dates contained in the proposed § 21.9625(a) apply for all payments except monthly housing payments with regards to active duty servicemembers. The only special beginning dates rules that are needed for active duty servicemembers are those for monthly housing payments contained in proposed § 21.9625(k).

Lastly, we propose to add § 21.9636(a)(4), which would change the discontinuance-date rule for non-lump sum payments (*e.g.,* monthly housing allowance) in death cases. We propose to discontinue payment effective the date of death. Our current rule, in § 21.9635(a), provides that if an individual dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of the lump sum payment will be the last date of the period covered by the lump sum payment. This current regulation also specifies that for all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended. The change to discontinue payment effective the date the individual dies is necessary because, upon death, the student terminates his or her attendance and, therefore, is no longer entitled to further payments. These payments, unlike lump sum payments, would not be made at the time of student's death and, therefore, deserve to be treated differently than lump sum payments because there is no reason for us to make a payment after it is already known that the payment is not authorized.

II. Fry Scholarship

a. General

On June 24, 2009, the President signed into law the Supplemental Appropriations Act, 2009, Public Law 111–32. Section 1002 of Public Law 111–32 amended 38 U.S.C. chapter 33 (the Post-9/11 GI Bill) by adding 38 U.S.C. 3311(b)(9), effective August 1, 2009, to extend eligibility for educational assistance under chapter 33 to children of members of the Armed Forces who, on or after September 11, 2001, die in line of duty while on active duty. The educational assistance payable for such individuals' pursuit of programs of education under chapter 33 is known as the ''Marine Gunnery Sergeant John David Fry Scholarship'' (Fry Scholarship). 38 U.S.C. 3311(f)(1). Although this amendment extending eligibility for chapter 33 educational assistance was effective August 1, 2009, section 1002(d)(2) of Public Law 111–32 allowed VA to begin making payments of educational assistance by not later than August 1, 2010. For individuals entitled to educational assistance between August 1, 2009, and July 31, 2010, section 1002(d)(2) requires VA to make retroactive payments. Accordingly, the changes implementing the Fry Scholarship would be applicable to claims received on or after August 1, 2009, and we propose to make retroactive payments for the period between August 1, 2009, and July 31, 2010, on any allowed claim received on or after August 1, 2009. This proposed rule would amend 38 CFR part 21, subpart P, specifically §§ 21.9520(d), 21.9530(f), 21.9626(o), 21.9640(a)(2), and 21.9700(b), to implement the Fry Scholarship.

b. Rules Required by Public Law 111–32

1. Definition of ''Child''

According to the amendment to 38 U.S.C. 3311(f)(2) made by section 1002(a) of Public Law 111–32, for purposes of paying the Fry Scholarship, the term ''child'' must ''include'' married individuals and individuals above 23 years of age. We believe Congress intended for VA to apply current law and regulations defining ''child'' for VA benefit purposes to eligibility determinations for the Fry Scholarship and include children who are married and/or above 23 years of age. Accordingly, for purposes of the Fry Scholarship, we propose to define ''child'' in § 21.9520(d) as an individual who meets the requirements of 38 CFR 3.57, (implementing the definition of ''child'' in 38 U.S.C. 101(4)), except for the requirements in § 3.57 pertaining to age and marital status. With regard to age and marital status, we propose to add § 21.9520(d)(1) and (2) to include in the definition of child, for purposes of eligibility for the Fry Scholarship, individuals who are married or over the age of 23. In proposed § 21.9520(d), we propose to include that eligibility to Fry Scholarship will be for the child of a person who, after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces.

2. Effective Date and Entitlement Beginning and Ending Dates

Section 1002(b) of Public Law 111–32 amended 38 U.S.C. 3313(c)(1) to provide individuals entitled to a Fry Scholarship the full amount of tuition and fees for pursuit of a program of education. We propose to add paragraph (2) to §§ 21.9640(a) and 21.9641(a) to explain that we will pay 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for a Fry Scholarship under § 21.9520(d).

Section 1002(c) amended 38 U.S.C. 3321(b) to specify that an individual who first becomes entitled to the Fry Scholarship before January 1, 2013, may use the entitlement until ''the end of the 15-year period beginning on the date of [the individual's] eighteenth birthday,'' *i.e.,* until age 33. We believe that the reference to an individual's 18th birthday in section 3321(b)(4) is intended only as a point in time used in determining the future ending date of the individual's entitlement, rather than the age at which an individual becomes eligible for the Fry Scholarship. Section 3321 speaks only of the period during which an individual ''may use'' his or her entitlement, not the date an individual may first be entitled to chapter 33 benefits. Section 3311 lists the individuals who meet the criteria for entitlement to chapter 33 educational assistance. Section 3311(b)(9) states that ''a child or spouse of a person who, on or after September 11, 2001, dies in line of duty while serving on active duty as a member of the Armed Forces'' is entitled to chapter 33 educational assistance; however, this section does not specify when such individual may first be entitled to chapter 33 benefits. In light of the lack of a specified beginning date of eligibility and given the fact that individuals can pursue a program of education at an institution of higher learning before reaching the age of 18, we believe a reasonable beginning date would be either when a child graduates from high school and receives a high school diploma, even if the child may not have turned 18, or when the child turns 18, whichever is earlier.

This interpretation of 38 U.S.C. 3321(b)(4) is consistent with our interpretation of other provisions of 38 U.S.C. 3321 when we have interpreted the statute in a manner that injects a logical beginning date when one is lacking. For example, for an individual who was last discharged or released from active duty before January 1, 2013, section 3321 specifies that entitlement to chapter 33 educational assistance expires at the end of the 15-year period beginning on the date of an individual's last discharge or release from active duty of at least 90 continuous days or discharge or release from active duty of at least 30 continuous days for a service-connected disability. *See* 38 U.S.C. 3321(a)(1), (b)(3). Section 3321, however, does not address the period of eligibility for individuals who are entitled to educational assistance based on a minimum of 90 aggregate days of active duty service who do not have a period of service consisting of 90 continuous days, as we stated in the preamble to proposed § 21.9530(b). 73 FR 78876, 78879–80. In § 21.9530(b), we established a 15-year period of eligibility for these individuals, beginning on the date of discharge or release from active duty for the last period of service used to meet the minimum service requirements under chapter 33.

Likewise, we propose to establish a reasonable beginning date for the period during which a child may use his or her entitlement to chapter 33 educational assistance as either the child's 18th birthday or upon attainment of a high school diploma, whichever is earlier. We propose to codify our interpretation pertaining to beginning dates of a child's eligibility in § 21.9626(o) and ending dates of a child's eligibility in § 21.9530(f). In § 21.9626(o), we propose to provide that the earliest beginning date of educational assistance for a child eligible for Fry Scholarship will be the earlier of either the date the child completes the requirements of a secondary school diploma (or an equivalency certificate) or the date the child reaches age 18. In § 21.9530(f), we propose to state that the ending date for a child who first becomes eligible for Fry Scholarship before January 1, 2013, is the date the child turns age 33. For a child who first becomes eligible to Fry Scholarship on or after January 1, 2013, we propose to provide that their eligbility to Fry Scholarship never expires.

We recognize that our interpretation means that a child may use the Fry Scholarship for a period that may exceed 15 years if the child begins an approved course of education before age 18. Nonetheless, our interpretation does not change the number of months of entitlement to chapter 33 educational assistance. Under 38 U.S.C. 3312(a), a child is entitled to a maximum of 36 months of educational assistance. Reading 38 U.S.C. 3312(a) and 3321(b)(4) together, we believe Congress intended that a Fry Scholarship be provided for a maximum of 36 months to any child of an individual who died in line of duty while on active duty in the Armed Forces after September 10, 2001, to pursue an approved program of education as long as the child has not reached 33 years of age. Section 112(b) of Public Law 115–48 further amended 38 U.S.C. 3321(b)(4) to extend the time for use of entitlement of chapter 33 educational assistance indefinitely for children who first become entitled to a Fry scholarship on or after January 1, 2013. Therefore, § 21.9530(f) would say, in the case of a child who first becomes entitled before January 1, 2013, benefits shall expire the day the child turns 33; or in the case of a child who first becomes entitled on or after January 1, 2013, benefits shall not expire.

3. Yellow Ribbon Program

Section 5003(a)(1) of Public Law 110–252 added 38 U.S.C. 3317 establishing the ''Yellow Ribbon G.I. Education Enhancement Program'' (Yellow Ribbon Program), which provides for enhancements to the educational assistance provided under 38 U.S.C. 3313. The final sentence of section 3317(a), as added by Public Law 110–252, provided that ''[t]he program shall only apply to covered individuals described in paragraphs (1) and (2) of section 3311(b).'' Although Congress, in Public Law 111–32, made specific

amendments to some provisions in chapter 33 concerning individuals entitled to Fry Scholarship benefits, it did not amend section 3317(a) to add a reference to section 3311(b)(9) to allow individuals entitled to Fry Scholarship benefits to be eligible for enhanced educational assistance under the Yellow Ribbon Program. Therefore, we could not provide enhanced educational assistance under this program to such individuals. Subsequently, with the enactment of Public Law 115–48, Congress amended section 3317(a), effective August 1, 2018, adding a reference to section 3311(b)(9), to explicitly apply the Yellow Ribbon Program to individuals entitled to Fry Scholarship benefits. Accordingly, we propose to amend 38 CFR 21.9700(b) to make clear that contributions under the Yellow Ribbon Program are available to individuals who establish eligibility for the Fry Scholarship under new § 21.9520(d) after August 1, 2018.

Executive Orders 12866 and 13563 and 14094

Executive Orders 12866 and 13563 and 14094 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this is a significant rule under Executive Order 12866, Section 3(f)(1), as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this regulatory action would affect some small entities, such as testing organizations or educational institutions who qualify as ''small'' using the most recent official revenue standards, the economic impact on them would be minor. Educational institutions of all sizes voluntarily apply for approval to receive GI Bill benefits likely because tuition and fees revenue from student Veterans consists of guaranteed government funding (from U.S. taxpayer funds). However, if the cost for smaller educational institutions applying for GI Bill approval and meeting the requirements for continued approval were substantial, participating in the GI Bill program would not be financially viable. Because the policies memorialized in this regulatory action have been in effect for a long period of time and small institutions continue to seek and maintain GI Bill approval, likely profiting from this status, we conclude that the rules and policies in this regulatory action do not significantly impact these entities. Furthermore, realizing that there are costs to educational institutions associated with their participation in GI Bill programs, Congress enacted 38 U.S.C. 3684, increasing the reporting fee payable to testing organizations and educational institutions for carrying out reporting requirements, consequently further minimizing the economic impact on smaller educational and testing organizations. On this basis, the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act of 1995

This proposed rule includes provisions constituting revised collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collections of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AQ88, Post-9/11 Improvements, Fry Scholarship, and Interval Payments Amendments'' and should be sent within 60 days of publication of this rulemaking. The collections of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a revised collection of information in—

- Evaluating whether the revised collection of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collections of information associated with this rulemaking contained in 38 CFR are described immediately following this paragraph, under its respective title.

Title: State Approving Agency Reports and Notices.

OMB Control No: 2900–0051.

CFR Provision: 38 CFR 21.4259(b).

Summary of collection of information: The collection of information in proposed 38 CFR 21.4259(b) would require State approving agencies (SAAs) who approve, disapprove, or suspend programs of education to prepare notices of approval to inform educational institutions, training establishments, and organizations or entities of the approval, disapproval, or suspension of their courses, training, or tests, and submit to VA copies of the notices for each program of education that is suspended or disapproved.

Description of need for information and proposed use of information: The collection of information is necessary to ensure programs of education are operating appropriately. VA will use the approval notice information to determine if payment of educational assistance is appropriate.

Description of likely respondents: State approving agencies.

Estimated total number of respondents: 57 in FY 2024.

Estimated total number of responses: 4,707 in FY 2024.

Estimated frequency of responses: Annual.

Estimated average burden per response: 15 total hours.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 70,605 burden hours. Using the annual number of responses 4,707, VA estimates a total annual reporting and recordkeeping burden of 70,605 for respondents.

Estimated cost to respondents per year: There is no cost to the respondents because, by contract, SAAs are reimbursed for submitting this information.

Title: Application for VA Education Benefits (VA Form 22–1990).

OMB Control No: 2900–0154.

CFR Provision: 38 CFR 21.9505, 21.9506, 21.9520(c), 21.9570, 21.9571, 21.9636(w), 21.9641(b)(3), 21.9691(h), and 21.9700(b).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9505, 21.9506, 21.9520(c), 21.9570, 21.9571, 21.9636(w), 21.9641(b)(3), 21.9691(h), and 21.9700(b) would require the following individuals to submit an application for VA education benefits to establish their eligibility:

- Reserve and National Guard members (38 CFR 21.9505, 21.9506)
- Individuals eligible for Montgomery GI Bill—Active Duty (chapter 30), Montgomery GI Bill—Selected Reserve (chapter 1606), and Reserve Educational Assistance Program (chapter 1607) who want to relinquish their eligibility to establish eligibility under the Post-9/11 GI Bill (chapter 33) (38 CFR 21.9520(c))
- Individuals who train with the U.S. Public Health Service and the National Oceanic and Atmospheric Administration who want to transfer Post-9/11 GI Bill benefits to dependents (38 CFR 21.9570, 21.9571)
- Individuals receiving chapter 33 benefits and who are eligible for 10 U.S.C. chapter 106a, 1606, or 1607, 10 U.S.C. 510, 38 U.S.C. chapter 30, 31, 32, or 35 or Hostage Relief Act of 1980 benefits who want to receive educational assistance under another program (38 CFR 21.9636(w))
- Students pursuing a non-college degree program at a non-IHL (38 CFR 21.9641(b)(3))
- Individuals eligible under multiple programs (38 U.S.C. chapter 30, 32, or 33 or 10 U.S.C. chapter 1606 or 1607) who must elect under which authority service is to be credited (38 CFR 21.9691(h))
- Individuals eligible for the Fry Scholarship who want to apply for Yellow Ribbon Program benefits (38 CFR 21.9700(b))

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. This information collected will be used by VA to determine an individual's eligibility for educational assistance benefits.

Description of likely respondents: Individuals.

Estimated number of respondents: 810,000 in FY 2024.

Estimated frequency of responses: Once.

Estimated average burden per response: 20 minutes (*VA.gov*); 15 minutes (paper).

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 249,750 burden hours. Using the annual number of responses 810,000 (567,000 responses at 20 minutes/response; 243,000 responses at 15 minutes/response), VA estimates a total annual reporting and recordkeeping burden of 249,750 for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $6,995,498 (567,000 applicants (using *Vets.gov*) per year × 20 minutes per application × $28.01 * = 5,293,890) and (243,000 (using paper form) per year × 15 minutes per application × $28.01 * = 1,701,608).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Dependents' Application for VA Education Benefits.

OMB Control No: 2900–0098.

CFR Provision: 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), 21.9691(h).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9520(d), 21.9530(f), 21.9691(e), and 21.9691(h) would require certain children to submit an application to establish eligibility for the Fry Scholarship, and certain individuals who must elect the Fry Scholarship or either Dependency and Indemnity Compensation (DIC) or Survivors' and Dependents' Educational Assistance (DEA) to submit an application to establish eligibility for the elected benefit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine an individual's eligibility for the Fry scholarship, DIC, or DEA.

Description of likely respondents: Individuals.

Estimated total number of respondents: 63,807 in FY 2024.

Estimated frequency of responses: Once.

Estimated average burden per response: 45 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 47,855 burden hours. Using the annual number of responses 63,807, VA estimates a total annual reporting and recordkeeping burden of 47,855 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $1,340,419 (63,807 respondents per year × 45 minutes per application × $28.01*).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Application for Reimbursement of a National Exam Fee.

OMB Control No: 2900–0706.

CFR Provision: 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9626(a)(3), 21.9668, 21.9681(b)(5) would require individuals to submit a claim and supporting

documentation to be reimbursed for the cost of a national test for admission or a national test for credit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a claimed national test, and to determine the amount of the reimbursement.

Description of likely respondents: Individuals.

Estimated total number of respondents: 310 in FY 2024.

Estimated frequency of responses: Once.

Estimated average burden per response: 15 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 78 burden hours. Using the annual number of responses 310, VA estimates a total annual reporting and recordkeeping burden of 78 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $2,185 (310 respondents per year × 15 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Application for Reimbursement of Licensing and Certification Fees.

OMB Control No: 2900–0695.

CFR Provision: 38 CFR 21.9667.

Summary of collection of information: The collection of information in proposed 38 CFR 21.9667 would require individuals to submit a claim to be reimbursed for the cost of licensing and certification tests.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to determine if an individual is eligible to receive reimbursement for a licensing and certification test, and to determine the amount of the reimbursement.

Description of likely respondents: Individuals.

Estimated total number of respondents: 4,210 in FY 2024.

Estimated total number of responses: 12,630 in FY 2024.

Estimated frequency of responses: On occasion. (3 responses per year).

Estimated average burden per response: 15 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 3,158 burden hours. Using the annual number of responses 12,630, VA estimates a total annual reporting and recordkeeping burden of 3,158 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $88,456 (12,630 responses per year × 15 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Monthly Certification for On-the-Job Training and Apprenticeship.

OMB Control No: 2900–0178.

CFR Provision: 38 CFR 21.9626(c).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9626(c) would require students pursuing on-the-job and apprenticeship programs at non-institutions of higher learning (IHLs) to submit monthly certifications to receive payment for such pursuit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used to determine whether an individual's educational assistance should be continued without change, amended, or terminated, and to determine the effective date of such continuance, amendment, or termination.

Description of likely respondents: Individuals.

Estimated total number of respondents: 15,900 in FY 2024.

Estimated total number of responses: 190,800 in FY 2024.

Estimated frequency of responses: Monthly.

Estimated average burden per response: 10 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 31,800 burden hours. Using the annual number of responses 190,800, VA estimates a total annual reporting and recordkeeping burden of 31,800 for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $890,718 (190,800 responses per year × 10 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Monthly Certification for Flight Training.

OMB Control No: 2900–0162.

CFR Provision: 38 CFR 21.9641(b)(5).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9641(b)(5) would require students pursuing flight training programs at non-IHLs to submit monthly certifications to receive payment for such pursuit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used to determine whether the individual's educational assistance should be continued without change, amended, or terminated, and to determine the effective date of such continuance, amendment, or termination.

Description of likely respondents: Individuals.

Estimated total number of respondents: 3,900 in FY 2024.

Estimated total number of responses: 23,400 in FY 2024.

Estimated frequency of responses: On occasion. (6 responses annually).

Estimated average burden per response: 30 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 11,700 burden hours. Using the annual number of responses 23,400, VA estimates a total annual reporting and recordkeeping burden of 11,700 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $327,717 (23,400 responses per year × 30 minutes per application × $28.01*).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Certification of Lessons Completed.

OMB Control No: 2900–0353.

CFR Provision: 38 CFR 21.9641(b)(6).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9641(b)(6) would

require students pursuing correspondence training programs at non-IHLs to submit certification of lessons completed to receive payment for such pursuit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits, which in the case of correspondence training, are based on the number of lessons completed. The information collected will be used by VA to determine the amount of educational assistance to be paid.

Description of likely respondents: Individuals.

Estimated total number of respondents: 154 in FY 2024.

Estimated total number of responses: 616 in FY 2024.

Estimated frequency of responses: Quarterly.

Estimated average burden per response: 10 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 103 burden hours. Using the annual number of responses 616, VA estimates a total annual reporting and recordkeeping burden of 103 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $2,885 (616 responses per year × 10 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Certification of Affirmation of Enrollment Agreement Correspondence Course.

OMB Control No: 2900–0576.

CFR Provision: 38 CFR 21.9641(b)(6).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9641(b)(6) would require students pursuing correspondence training programs at non-IHLs to submit an affirmation of enrollment in a correspondence course to receive payment for such pursuit.

Description of need for information and proposed use of information: The collection of information is necessary to pay benefits. The information collected will be used by VA to ensure an individual is enrolled in a correspondence course following the signing of a contract.

Description of likely respondents: Individuals.

Estimated total number of respondents: 75 in FY 2024.

Estimated frequency of responses: Annually.

Estimated average burden per response: 3 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 4 burden hours. Using the annual number of responses 75, VA estimates a total annual reporting and recordkeeping burden of 4 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $112 (75 responses per year × 3 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: VA Enrollment Certification.

OMB Control No: 2900–0073.

CFR Provision: 38 CFR 21.9681(b)(1); 21.9721.

Summary of collection of information: The collection of information in proposed 38 CFR 21.9681(b)(1) and 21.9721 would require an educational institution to certify a student's enrollment in an approved program of education (other than a student seeking reimbursement for taking an approved licensure or certification test or a national test).

Description of need for information and proposed use of information: The collection of information is necessary to ensure a student is properly enrolled in an approved program of education before making any payments of educational assistance benefits. VA will use the information collected on VA Form 22–1999 to determine the amount of educational benefits payable to an individual during a period of enrollment or training.

Description of likely respondents: Individuals.

Estimated total number of respondents: 7,581,273 in FY 2024.

Estimated total number of responses: 15,162,546 in FY 2024.

Estimated frequency of responses: On occasion. (2 responses per year).

Estimated average burden per response: 10 minutes.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 2,527,091 burden hours. Using the annual number of responses 15,162,546, VA estimates a total annual reporting and recordkeeping burden of 2,527,091 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $70,783,819 (15,162,546 responses per year × 10 minutes per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Title: Yellow Ribbon Program Agreement.

OMB Control No: 2900–0718.

CFR Provision: 38 CFR 21.9700(b).

Summary of collection of information: The collection of information in proposed 38 CFR 21.9700(b) would include individuals who establish eligibility for the Fry Scholarship to receive benefits under the Yellow Ribbon Program.

Description of need for information and proposed use of information: The collection of information is necessary to provide IHLs with the opportunity to indicate their participation in the Yellow Ribbon Program and to allow IHLs to indicate the maximum number of students that will receive benefits under the program. VA will use the information collected to determine which IHLs will be participating in the Yellow Ribbon Program, the maximum number of individuals for whom the IHL will make contributions in any given academic year, and the maximum dollar amount of outstanding established charges that will be waived for each student based on student status (*i.e.,* undergraduate, graduate, doctoral) or sub-element (*i.e.,* college or professional school).

Description of likely respondents: Institutions of higher learning.

Estimated total number of respondents: 5,600 in FY 2024.

Estimated frequency of responses: Once.

Estimated average burden per response: 14 hours.

Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 78,400 burden hours. Using the annual number of responses 5,600, VA estimates a total annual reporting and recordkeeping burden of 78,400 hours for respondents.

Estimated cost to respondents per year: VA estimates the annual cost to respondents to be $2,195,984 (5,600 responses per year × 14 hours per application × $28.01 *).

* To estimate the total information collection burden cost, VA used the 2021 Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oesnat.htm#15-0000.*

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this proposed rule are 64.027, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.116, Veteran Readiness for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance.

Severability

The purpose of this section is to clarify the agencies' intent with respect to the severability of provisions of this proposed rule. Each provision that the agency has proposed is capable of operating independently. If any provision of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agencies intend that the rule remain applicable to all other circumstances.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Veteran readiness.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 10, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as follows:

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

■ 1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

■ 2. Amend § 21.3022 by:
■ a. In paragraph (i), removing ''and''.
■ b. In paragraph (j), removing the period and adding a semicolon in its place.
■ c. Adding paragraph (k).
The addition reads as follows:

§ 21.3022 Nonduplication—programs administered by VA.

* * * * *

(k) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

Subpart D—Administration of Educational Assistance Programs

■ 3. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

§ 21.4002 [Amended]

■ 4. Amend § 21.4002, in paragraph (a), by removing ''(*see* §§ 19.192 and 19.183 of this chapter.)''.
■ 5. Amend § 21.4022 by:
■ a. In paragraph (k), removing the period and adding a semicolon in its place.
■ b. Adding paragraph (l).
The addition reads as follows:

§ 21.4022 Nonduplication—programs administered by VA.

* * * * *

(l) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

■ 6. Amend § 21.4138 by:
■ a. Revising the paragraph heading for paragraph (f).
■ b. Adding paragraph (g).
The revision and addition read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(f) *Payment for intervals and temporary school closings before August 1, 2011.* * * *

* * * * *

(g) *Payment for temporary school closings after July 31, 2011.* (1) Subject to paragraph (2), VA may authorize payment for a temporary school closing that occurs during a certified period of enrollment if the closing is due to an emergency (including a strike) or established policy based on an Executive Order of the President.

(2) An individual may not receive more than 4 weeks of payment for temporary school closings in any 12-month period.

(3) The decision as to whether a school closing is permanent or temporary will be made by—

(i) The director of the VA regional processing office of jurisdiction; or

(ii) The Director, Education Service, if the emergency or established policy based on an Executive Order of the President results in the closing of schools in the jurisdiction of more than one VA regional processing office.

(4) A school that disagrees with a decision made under paragraph (g)(3) of this section may request an administrative review. The review request must be submitted in writing and received by the director of the VA regional processing office of jurisdiction, or the Director, Education Service, whoever made the decision under paragraph (g)(3), within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(i) Director, Education Service, if the director of the VA regional processing office of jurisdiction made the initial decision to continue or discontinue payments.

(ii) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3680(a))

■ 7. Amend § 21.4150 by revising paragraphs (c)(2) and (f) to read as follows:

§ 21.4150 Designation.

* * * * *

(c) * * *

(2) When VA has approval, disapproval, or suspension authority.

* * * * *

(f)(1) The Secretary is responsible for approving programs of education offered by any agency or instrumentality of the Federal Government.

(2)(i) Effective August 1, 2011, subject to sections 21.4201, 21.4203, 21.4251, 21.4252, 21.4253(d)(2) and (d)(3) of this chapter, the following programs of education are deemed approved—

(A) An accredited standard college degree program offered at a public or not-for-profit proprietary institution of higher learning that is accredited by a national or regional agency or organization recognized for that purpose by the Department of Education.

(B) A flight training course approved by the Federal Aviation Administration that is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141.

(C) An apprenticeship program registered with the Office of Apprenticeship of the Employment Training Administration of the Department of Labor or a State apprenticeship agency recognized by the Office of Apprenticeship under 29 U.S.C. 50, *et seq.*

(D) A program of education leading to a secondary school diploma offered by a secondary school approved in the State in which it is operating.

(E) A licensure test offered by a Federal, State, or local government.

(Authority: 38 U.S.C. 3672(b))

* * * * *

■ 8. Amend § 21.4151 by:

■ a. In paragraph (b)(5), removing ''and''.

■ b. Redesignating paragraph (b)(6) as (b)(7).

■ c. Adding new paragraph (b)(6).

The addition reads as follows:

§ 21.4151 Cooperation.

* * * * *

(b) * * *

(6) Effective August 1, 2011, performing compliance and risk-based surveys and oversight (in accordance with the provisions in the State approving agency contract) without regard to whether the Secretary or the State approving agency approved the courses offered at the educational institution or the courses were deemed approved; and

* * * * *

■ 9. Amend § 21.4200 by adding paragraphs (mm), (nn), and (oo) to read as follows:

§ 21.4200 Definitions.

* * * * *

(mm) *National test for admission.* A national test for admission is a test used for admission to an institution of higher learning or graduate school (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)). A list of national tests approved by VA can be found at: *http://inquiry.vba.va.gov/weamspub/buildSearchNE.do.*

(Authority: 38 U.S.C. 3452(b), 3315A, 3501(a)(5))

(nn) *National test for credit.* A national test for credit is a test that provides an opportunity for course credit at an institution of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)). A list of national tests approved by VA can be found at: *http://inquiry.vba.va.gov/weamspub/buildSearchNE.do.*

(Authority: 38 U.S.C. 3452(b), 3315A, 3501(a)(5))

(oo) *We, us, our.* When we use the terms *we, us,* or *our,* we mean the United States Department of Veterans Affairs.

■ 10. Amend § 21.4206 by revising the introductory text, paragraphs (b) and (e) to read as follows:

§ 21.4206 Reporting fee.

VA will pay annually to each educational institution furnishing education or to each joint apprenticeship training committee acting as a training facility under 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

* * * * *

(b) In computing the reporting fee, VA will not count an eligible individual whose only receipt of educational assistance during a calendar year was tuition assistance Top-Up under 38 U.S.C. chapter 30, a rural relocation payment, or reimbursement for a national test for admission, national test for credit, or a licensing or certification test.

* * * * *

(e) Before VA will pay a reporting fee, an educational institution must certify that—

(1) It has exercised reasonable diligence in determining whether it or any courses approved for VA education benefits offered by it meet all the applicable requirements of 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36;

(2) It will, without delay, report any failure to meet any requirement to VA; and

(3) The reporting fees received after January 4, 2011, will be used solely for the purpose of making certifications for VA educational assistance under 10 U.S.C. 510, chapter 1606, or chapter 1607 or 38 U.S.C. 30, 32, 33, 35, or 36 or for supporting programs for veterans.

(Authority: 10 U.S.C. 510, 16136, 16166; 38 U.S.C. 3034, 3241(a), 3323(a), 3684(c))

■ 11. Amend § 21.4235 by:

■ a. Revising paragraph (a) introductory text and the authority citation following paragraph (a)(3).

■ b. Removing paragraph (b).

■ c. Redesignating paragraphs (c) through (f) as (b) through (e).

■ d. In newly redesignated paragraph (b)(5), removing ''(c)(2)'' and adding in its place ''(b)(2)''.

■ e. In newly redesignated paragraph (e), removing ''chapter 1606 or 38 U.S.C. chapter 30, 32, or 35'' and adding in its place ''chapter 1606 or 1607 or 38 U.S.C. chapter 30, 32, 33, or 35''; removing ''(a)(2) through (d)'' and adding in its place ''(a)(2) through (c)''; and removing ''paragraph (f)(1)'' and adding in its place ''paragraph (e)(1)''.

■ f. Revising the authority citation following newly redesignated paragraph (e)(2).

The revisions read as follows:

§ 21.4235 Programs of education that include flight training.

* * * * *

(a) An individual who is otherwise eligible to receive educational assistance under 38 U.S.C. chapters 30, 32, or 33, or a reservist eligible for educational assistance under 10 U.S.C. chapters 1606 or 1607, may receive educational assistance for flight training in an approved program of education provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (e) of this section, the individual must—

* * * * *

(3) * * *

(Authority: 10 U.S.C. 16136(c), 16166(c); 38 U.S.C. 3034(d), 3241(b), 3313(g), 3323(a))

* * * * *

(e) * * *

(2) * * *

(Authority: 10 U.S.C. 16136, 16166; 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241, 3301(3), 3323(a)).

* * * * *

■ 12. Amend § 21.4253 by revising paragraph (a) introductory text and the authority citation following paragraph (a)(5) to read as follows:

§ 21.4253 Accredited Courses.

(a) *General.* All standard college degree courses offered at proprietary for-profit institutions and non-college degree courses offered at proprietary for-profit institutions and public or proprietary not-for-profit institutions may be approved as accredited courses if they meet one of the following criteria:

* * * * *

(5) * * *

(Authority: 38 U.S.C. 501(a), 3323(c) 3675(a))

* * * * *

■ 13. Amend § 21.4259 by revising paragraphs (a) and (b) to read as follows:

§ 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency or the Secretary (whichever entity approved the program), after approving a program of education or licensing or certification test—

(1) May suspend the approval of a program of education for new enrollments or for a licensing or certification test for a period not to exceed 60 days to allow the institution to correct any deficiencies if the evidence of record establishes that the program of education or licensing or certification test fails to meet any of the requirements for approval.

(2) Will immediately disapprove the program of education or licensing or certification test if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(b) *Notification of suspension or disapproval.* (1) Upon suspension or disapproval, the State approving agency or the Secretary, whichever suspended or disapproved the program of education, will notify the educational institution by certified or registered letter with a return receipt secured. It is incumbent upon the State approving agency or the Secretary to determine the conduct of the program of education and to take immediate appropriate action in each case in which it is found that the conduct of the program of education in any manner fails to comply with the requirements for approval.

(2)(i) Each State approving agency will immediately notify VA of each program of education or licensing and certification test that it has suspended or disapproved.

(ii) The Secretary will immediately notify the appropriate State approving agency of each program of education or licensing and certification test that it has suspended or disapproved.

(Authority: 38 U.S.C. 3679, 3689)

* * * * *

■ 14. Amend § 21.4263 by revising paragraph (a) to read as follows:

§ 21.4263 Approval of flight training courses.

(a)(1) A flight program may be approved if—

(i)(A) For 38 U.S.C. chapters 32 and 35 and 10 U.S.C. chapters 1606 and 1607, the flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; or

(B) For 38 U.S.C. chapters 30 and 33, effective August 1, 2011, the flight program is deemed approved (A flight program will be deemed approved if it is approved by the Federal Aviation Administration and is offered by a certified pilot school that possesses a valid Federal Aviation Administration pilot school certificate or provisional pilot school certificate under 14 CFR part 141. Flight programs offered at flight schools listed in paragraph (b)(2) and (b)(3) of this section will not be approved for VA training under 38 U.S.C. chapters 30 and 33); and

(ii)(A) The flight training offered by a flight school is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(B) The flight training is offered by an institution of higher learning for credit towards a standard college degree program.

(2) A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it.

(Authority: 10 U.S.C. 16136(c), 16166(c), 38 U.S.C. 3032(e), 3241(b), 3672, 3676, 3680A)

* * * * *

■ 15. Amend § 21.4268 by revising paragraph (a) to read as follows:

§ 21.4268 Approval of licensing and certification tests.

(a) *Authority to approve licensing and certification tests.* (1) *Tests deemed approved.* Effective August 1, 2011, a licensure test offered by a Federal, State, or local government is deemed approved in accordance with § 21.4150(f).

(2) *VA approval.* The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve licensing and certification tests and the organizations and entities offering the tests as provided in § 21.4250(c)(2)(vi).

(3) *State approving agency approval.* Except for the licensing and certification tests and organizations or entities offering these tests that are approved under (a)(1) and (a)(2) of this section, the Secretary of Veterans Affairs delegates to each State approving agency the authority to approve licensing and certification tests and the organizations and entities offering these tests located within the State approving agency's jurisdiction as provided in § 21.4250(a).

(Authority: 38 U.S.C. 512(a), 3672(b), 3689(a))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 16. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 17. Amend § 21.5022 by:

■ a. In paragraph (a)(1)(ix), removing ''or''.

■ b. In paragraph (a)(1)(x), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(1)(xi).

The addition reads as follows:

§ 21.5022 Eligibility under more than one program.

(a) * * *

(1) * * *

(xi) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 18. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 19. Amend § 21.7143 by:

■ a. In paragraph (a)(1)(ix), removing ''or''.

■ b. In paragraph (a)(1)(x), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(1)(xi).

The addition reads as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) * * *

(1) * * *

(xi) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 20. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

■ 21. Amend § 21.7642 by:

■ a. In paragraph (a)(9), removing ''or''.

■ b. In paragraph (a)(10), removing the period and adding a semicolon in its place.

■ c. Adding paragraph (a)(11).

The addition reads as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) * * *

(11) Effective August 1, 2011, 10 U.S.C. 510 (National Call to Service).

* * * * *

Subpart P—Post-9/11 GI Bill

■ 22. The authority citation for part 21, subpart P continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

■ 23. Amend § 21.9505 by:

■ a. Revising the section heading.

■ b. In the introductory text, removing ''apply.'' and adding in its place ''apply to provisions effective before August 1, 2011, unless otherwise noted.''

■ c. Revising the term ''Active duty''.

■ d. Adding in alphabetical order the term ''Educational institution''.

■ e. Revising the term ''Entry level and skill training''.

■ f. Adding in alphabetical order the term ''Fugitive felon''.

The revisions and additions read as follows:

§ 21.9505 Definitions—for provisions effective before August 1, 2011.

* * * * *

Active duty means—

(1) Full-time duty:

(i) In the regular components of the Armed Forces, or

(ii) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(2) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (1)(ii) under the definition of ''active duty'' in this section, full-time service—

(i) In the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(3) Active duty does not include—

(i) Any period during which the individual—

(A) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians; or

(B) Served as a cadet or midshipman at one of the service academies; or

(C) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(ii) A period of service—

(A) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b); or

(B)(*1*) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348; or

(*2*) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under section 1925 of title 14, U.S.C.

(C) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(D) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109.

(iii) A period of service after July 31, 2011, used to establish eligibility under 38 U.S.C. chapter 30 or 32, or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c); Pub. L. 111–377, 124 Stat. 4107–4108)

* * * * *

Educational institution has the same meaning as the term *institution of higher learning* as defined in § 21.4200(h) for training pursued prior to August 1, 2011.

(Authority: 38. U.S.C. 3323(a))

* * * * *

Entry level and skill training means—

(1) Basic Combat Training, Advanced Individual Training, and, effective January 4, 2011, One Station Unit Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training (''A'' School) for members of the Navy

(3) Basic Military Training and Technical Training for members of the Air Force

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training and, for individuals entering service on or after January 4, 2011, Skill Training (or so-called ''A'' School) for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

* * * * *

Fugitive felon means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 3323(c), 5313B)

* * * * *

■ 24. Add § 21.9506 to read as follows:

§ 21.9506 Definitions—for provisions effective after July 31, 2011.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33), effective after July 31, 2011, unless otherwise noted, the following definitions apply. (*See also* additional definitions in §§ 21.1029 and 21.4200).

Academic year means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

Active duty means—

(1) Full-time duty:

(i) In the regular components of the Armed Forces, or

(ii) Under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304.

(2) In the case of a member of the Army National Guard of the United States or the Air National Guard of the United States, in addition to service described in paragraph (1)(ii) under the definition of ''active duty'' in this section, full time service—

(i) In the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard; or

(ii) In the National Guard under 32 U.S.C. 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(3) Active duty does not include—

(i) Any period during which the individual—

(A) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians; or

(B) Served as a cadet or midshipman at one of the service academies; or

(C) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(ii) A period of service—

(A) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b); or

(B)(*1*) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348; or

(*2*) Effective for individuals entering into agreements after January 3, 2011, required by an officer pursuant to an agreement under section 1925 of title 14, U.S.C.

(C) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(D) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b), (c), (h); Pub. L. 111–377, 124 Stat. 4107–4108)

Advance payment means an amount of educational assistance payable under § 21.9641(c) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Course means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3323(c))

Distance learning means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7).

(Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

Educational assistance means all monetary benefits (including but not limited to tuition, fees, and monthly housing allowances) payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33

(Authority: 38 U.S.C. 3313)

Educational institution has the same meaning as the term institution of higher learning as defined in § 21.4200(h).

(Authority: 38. U.S.C. 3323(a)).

Enrollment period means a term, quarter, or semester during which the educational institution offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Entry level and skill training means—

(1) For members of the Army—

(i) Basic Combat Training,

(ii) Advanced Individual Training, and

(iii) Effective January 4, 2011, One Station Unit Training.

(2) For members of the Navy, Recruit Training (Boot Camp) and Skill Training (''A'' School).

(3) For members of the Air Force, Basic Military Training and Technical Training.

(4) For members of the Marine Corps, Recruit Training and Marine Corps Training (School of Infantry Training).

(5) For members of the Coast Guard—

(i) Basic Training and

(ii) For individuals entering service on or after January 4, 2011, Skill Training (or so-called ''A'' School).

(Authority: 38 U.S.C. 3301(2))

Fees mean any mandatory charges (other than tuition, room, and board) that are applied by the educational institution for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.

(Authority: 38 U.S.C. 501(a), 3323(c))

Fugitive felon means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 3323(c), 5313B)

Institution of higher learning (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also includes an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the Secretary of Education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

Lump sum payment means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

Mitigating circumstances means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

(1) An illness or mental illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable change in the individual's conditions of employment;

(4) An unavoidable geographical transfer resulting from the individual's employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to

suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the educational institution;

(7) Unanticipated active duty for training; or

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

Net cost means the amount of in-State tuition and fees the individual enrolled in a program of education is responsible for paying after the application of any—

(1) Waiver of, or reduction in, tuition and fees, and

(2) Scholarship, or other Federal, State, institutional, or employer-based aid or assistance (other than loans and any funds provided under section 401(b) of the Higher Education Act of 1965) that is provided directly to the institution specificially designated for the sole purpose of reducing the individual's tuition and fee charges.

(Authority: 38 U.S.C. 3313, 3323(c))

Non-public institution means a proprietary institution as defined in

§ 21.4200 (z) of this title.

(Authority: 38 U.S.C. 3323(c))

Program of education means a curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an educational institution that is accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the educational institution's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

Pursuit means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of title 38, U.S.C., and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Rate of pursuit means the measurement obtained by dividing the number of course hours (or the equivalent hours as determined in § 21.9750) that an individual is pursuing, including hours applied to refresher, remedial, and deficiency courses, by the number of hours considered to be full-time training at the educational institution. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(Authority: 38 U.S.C. 3323, 3680)

Transferor means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0154.)

■ 25. Revise § 21.9520 to read as follows:

§ 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33, if he or she—

(a) Serves on active duty after September 10, 2001, for a minimum of 90 aggregate days, excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, *see* § 21.9640(a) or § 21.9641(a), whichever is applicable) and, after completion of such service,—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5)(i) Before January 4, 2011, is discharged or released from service for—

(A) A medical condition that preexisted such service and is not determined to be service-connected;

(B) Hardship, as determined by the Secretary of the military department concerned; or

(C) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(ii) On or after January 4, 2011, is discharged or released from service with an honorable discharge for—

(A) A medical condition that preexisted such service and is not determined to be service-connected;

(B) Hardship, as determined by the Secretary of the military department concerned; or

(C) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves on active duty after September 10, 2001, for a minimum of 30 continuous days and, after completion of such service, is discharged from active duty under other than dishonorable conditions due to a service-connected disability; or

(c)(1) After meeting the minimum service requirements in paragraph (a) or (b) of this section—

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607, if eligible for such benefits;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22–1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following—

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable

chapters listed in paragraph (c)(1)(i) of this section (*e.g.,* ''I elect to receive benefits under the Post-9/11–GI Bill in lieu of benefits under the Montgomery GI Bill—Active Duty (chapter 30) program.'');

(iii) The date the individual wants the election to be effective (*e.g.,* ''I want this election to take effect on August 1, 2009.''). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (*e.g.,* ''I understand that my election is irrevocable and may not be changed.''); or

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0154.)

(d) Is the child of a person who, after September 10, 2001, died in the line of duty while serving on active duty as a member of the Armed Forces. For purposes of this paragraph, the term ''child'' means an individual who meets the requirements of § 3.57 of this chapter, except as to age and marital status. With regard to age and marital status, the term includes individuals who are–

(1) Married; or

(2) Over the age of 23.

(Authority: 38 U.S.C. 3311; Pub. L. 111–32, 123 Stat. 1859)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

§ 21.9525 [Amended]

■ 26. Amend § 21.9525 by removing ''under § 21.9640(b)(1)(ii) or (b)(2)(ii)'' each place it appears and adding in each place ''under § 21.9640(b)(1)(ii) or (b)(2)(ii) or § 21.9641(c)''.

■ 27. Amend § 21.9530 by:

■ a. In paragraph (a), removing ''through (e)'' and adding in its place ''through (f)''.

■ b. Adding paragraph (f) after the authority citation following paragraph (e).

The addition reads as follows:

§ 21.9530 Eligibility time limit.

* * * * *

(f) *Time limit for child eligible under 38 CFR 21.9520(d) (Marine Gunnery Sergeant John David Fry Scholarship).* (1) In the case of a child who first becomes entitled to educational assistance under 38 CFR 21.9520(d) before January 1, 2013, the period during which the child may use his or her entitlement expires the day the child turns 33; or

(2) In the case of a child who first becomes entitled to educational assistance under 38 CFR 21.9520(d) on or after January 1, 2013, the period during which the child may use his or her entitlement never expires.

(Authority: 38 U.S.C. 3321(b))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

■ 28. Revise § 21.9550 to read as follows:

§ 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual who has not used any entitlement under 38 U.S.C. chapter 30 or has not revoked any months of chapter 30 entitlement by transferring to a dependent and who makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30 will be entitled to 36 months of educational assistance under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9561(g), 21.9570(m), 21.9571(m), 21.9635(o), and 21.9636(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

■ 29. Amend § 21.9560 by revising the section heading and adding introductory text to read as follows:

§ 21.9560 Entitlement charges—for provisions effective before August 1, 2011.

For training that occurs before August 1, 2011—

* * * * *

■ 30. Add § 21.9561 to read as follows:

§ 21.9561 Entitlement charges—for provisions effective after July 31, 2011.

For training that begins after July 31, 2011—

(a) *Training pursued at an IHL.* The entitlement charge for an individual pursuing training at an IHL will be one of the following:

(1) During any period for which VA pays net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period;

(2) During any period for which VA does not pay net costs or a Yellow Ribbon Program payment to the institution of higher learning on the individual's behalf but pays a monthly housing allowance or an increase (''kicker'') to the individual, the individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period for each day the individual received a monthly housing allowance or an increase (''kicker'');

(3) During any period for which VA does not pay net costs or Yellow Ribbon Program payment to the institution of higher learning on the individual's behalf or a monthly housing allowance or an increase (''kicker'') to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(b) *Training pursued at a non-college degree institution.* The entitlement charge for an individual pursuing a certificate or other non-college degree at a non-college degree institution will be one of the following:

(1) During any period for which VA pays tuition and fees to the non-college degree institution on the individual's behalf, the individual will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by the amount equal to 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(3)(ii) or (iii).

(2) During any period for which VA does not pay net costs to the non-college degree institution on the individual's behalf but pays a monthly housing allowance or an increase (''kicker'') to the individual, the individual will be charged a percentage of a day equal to the individual's rate of pursuit for each day of the certified enrollment period

for each day the individual received a monthly housing allowance or an increase (''kicker'').

(3) During any period for which VA does not pay net costs to the non-college degree institution on the individual's behalf or a monthly housing allowance or an increase (''kicker'') to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(c) *Apprenticeship or other on-the-job training.* For each month an individual is paid educational assistance while pursuing an approved apprenticeship or other on-the-job training program, VA will make a charge against entitlement of—

(1) During the first 6-month period of the program, 1 month for each month of training pursued.

(2) During the second 6-month period of the program, .80 of a month for each month of training pursued.

(3) During the third 6-month period of the program, .60 of a month for each month of training pursued.

(4) During the fourth 6-month period of the program, .40 of a month for each month of training pursued.

(5) After the first 24 months of the program, .20 of a month for each month of training pursued.

(d) *Flight training.* An individual pursuing a non-college degree program consisting of flight training will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(5)(ii) or (iii).

(e) *Correspondence training.* An individual pursuing a program of education by correspondence will be charged entitlement equal to the number of months, and fraction thereof measured in days, determined by dividing the total amount paid by 1/12th of the amount applicable in the academic year in which payment is made under § 21.9641(b)(6)(ii) or (iii).

(f) *Licensing or certification tests and national tests.* When an individual receives educational assistance for taking an approved licensing or certification test, national test for admission, or national test for credit, VA will make a charge against entitlement for each payment made to him or her. The charge will be determined by—

(1) Dividing the total amount of the payment by—

(i) For the academic year beginning August 1, 2011, $1460; or

(ii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h) (but for a licensing or certification test the amount will not be greater than $2,000) and (2)(i) For tests taken prior to August 1, 2018, rounding the result of paragraph (f)(1) of this section to the nearest whole month. The charge must be at least one month.

(ii) For test taken on or after August 1, 2018, multiplying the result of paragraph (f)(1) of this section by 30, rounding to the nearest whole day. The charge must be at least one day.

(Authority: 38 U.S.C. 3315, 3315A)

(g) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(2) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(3) For receipt of a work-study allowance as provided under § 21.4145.

(Authority U.S.C. 3485)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being—

(A) Ordered to active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) While on active duty service, ordered to a new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(h) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment for the entire certified period of enrollment; or

(3) The individual requests interruption or cancellation for any break when the school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual received a payment for educational assistance provided under this chapter for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(i) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balance as determined in paragraph (i)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (i)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative

costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (i)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

■ 31. Amend § 21.9570 by revising the section heading and in the introductory text removing ''An individual'' and adding in its place ''For training that occurs before August 1, 2011, an individual'' to read as follows:

§ 21.9570 Transfer of entitlement—for provisions effective before August 1, 2011.

* * * * *

■ 32. Add § 21.9571 to read as follows:

§ 21.9571 Transfer of Entitlement—for provisions effective after July 31, 2011.

For training that occurs after July 31, 2011, an individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own service as a member of the Uniformed Services, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent using transferred entitlement in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9506—Definitions—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.* (i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.* (i) Section 21.9550—Entitlement;

(ii) Section 21.9561—Entitlement charges—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.* (i) Section 21.9580—Counseling;

(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.* (i) Section 21.9591—Approved programs of education and courses—for provisions effective after July 31, 2011;

(ii) Section 21.9601—Overcharges—for provisions effective after July 31, 2011.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.* (i) Section 21.9620—Educational assistance;

(ii) Section 21.9626—Beginning dates—for provisions effective after July 31, 2011, except for paragraphs (e), (g), (h), (k), or (l);

(iii) Section 21.9630—Suspension or discontinuance of payments;

(iv) Section 21.9636—Discontinuance dates—for provisions effective after July 31, 2011, except for paragraphs (o), and (v);

(v) Section 21.9660—Rural relocation benefit;

(vi) Section 21.9667—Reimbursement for licensing or certification tests—for provisions effective after July 31, 2011;

(vii) Section 21.9668—Reimbursement for national tests;

(viii) Section 21.9670—Work-study allowance;

(ix) Section 21.9676—Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011;

(x) Section 21.9681—Certifications and release of payments—for provisions effective after July 31, 2011;

(xi) Section 21.9685—Tutorial assistance;

(xii) Section 21.9691—Nonduplication of educational assistance—for provisions effective after July 31, 2011;

(xiii) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and

(Authority: 38 U.S.C. 3319)

(xiv) Section 21.9700—Yellow Ribbon Program.

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.* (i) Section 21.9710—Pursuit;

(ii) Section 21.9715—Advance payment certification;

(iii) Section 21.9721—Certification of enrollment—for provisions effective after July 31, 2011;

(iv) Section 21.9725—Progress and conduct;

(v) Section 21.9735—Other required reports;

(vi) Section 21.9740—False, late, or missing reports; and

(vii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.* Section 21.9750—Course measurement.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* Section 21.9770—Administrative.

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to:

(i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter at the time of transfer.

(3) A child must meet the definition of child in § 3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in § 21.9571(d)(1) before the child attains the age of 23.

(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her department to transfer entitlement may do so at any time while serving as a member of the uniformed services, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.* (1) An individual transferring entitlement under this section must:

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent. The designated beginning date may not be earlier than the date the individual requests approval from his or her service department.

(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of:

(i) Thirty-six months of his or her entitlement; or

(ii) The maximum amount authorized by the Secretary of the department concerned; or

(iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement (transferred entitlement is ''used'' in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun) at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the Secretary of the department concerned as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time, except that a modification of a beginning date under paragraph (d)(1)(iii) of this section must be effective on or after the date the modification is submitted. Any modification made will apply only with respect to unused transferred entitlement (transferred entitlement is ''used'' in the amount of the entire enrollment period on the first day of the enrollment period; therefore, a transferor cannot revoke the entitlement used for an enrollment period after the enrollment period has begun). The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9641 (and §§ 21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in § 21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under § 21.9641 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of payment for the net cost of tuition and fees the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of payment for the net cost of tuition and fees to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under § 21.9571; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the uniformed services in order to participate in the transferability program, unless—

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the department concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of

duty, as determined by the Secretary of the department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for—

(A) A disability; or

(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (l)(1)(ii) of this section.

(Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service are not subject to the 48-month limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48-month limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0154.)

■ 33. Amend § 21.9590 by revising the section heading and adding introductory text to read as follows:

§ 21.9590 Approved programs of education and courses—for provisions effective before August 1, 2011.

For training that occurs prior to August 1, 2011—

* * * * *

■ 34. Add § 21.9591 to read as follows:

§ 21.9591 Approved programs of education and courses—for provisions effective after July 31, 2011.

For training that begins on or after August 1, 2011—

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, national test for admission, or national test for credit for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of tuition and fees not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3315, 3315A, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9506;

(2) Except for a program consisting of a licensing or certification test, a national test for admission, or a national test for credit, the program has an educational, vocational, or professional objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, licensing or certification tests, national tests for admission, or national tests for credit in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, or for a program consisting of a national test for admission or a national test for credit, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

■ 35. Amend § 21.9600 by revising the section heading and adding introductory text to read as follows:

§ 21.9600 Overcharges—for provisions effective before August 1, 2011.

The provisions of this section apply to enrollment periods that begin before August 1, 2011.

* * * * *

■ 36. Add § 21.9601 to read as follows:

§ 21.9601 Overcharges—for provisions effective after July 31, 2011.

The provisions of this section apply to enrollment periods that begin after July 31, 2011.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments if the educational institution charges an individual, or receives from an individual or from VA on behalf of an individual, an amount for tuition and fees that exceeds the tuition and fees that the educational institution requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests, national test for admission, or national tests for credit may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test, national test for admission, or national test for credit, when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

■ 37. Revise § 21.9620 to read as follows:

§ 21.9620 Educational Assistance.

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in §§ 21.9640 and 21.9641 of this part.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

■ 38. Amend § 21.9625 by:

■ a. Revising the section heading.

■ b. In the introductory text, removing ''VA will determine'' and adding in its place ''For a claim submitted during the period beginning August 1, 2009, and ending July 31, 2011, VA will determine''.

■ c. Adding paragraph (m).

The revision and addition reads as follows:

§ 21.9625 Beginning dates—for provisions effective before August 1, 2011.

* * * * *

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

(1) Arrest;

(2) Surrendering to the issuing authority;

(3) Dismissal; or

(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 3323(c), 5313B)

■ 39. Add § 21.9626 to read as follows:

§ 21.9626 Beginning dates—for provisions effective after July 31, 2011.

For a claim submitted after July 31, 2011, VA will determine the beginning date of an award or increased award of educational assistance under this section. In no case will the beginning date be earlier than August 1, 2009, or for training pursued at non-degree institutions before October 1, 2011. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or educational institution), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test, a national test for admission, or a national test for credit.* (i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be the latest of—

(A) The date the educational institution certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the program of education;

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of—

(A) The date the educational institution certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) When the claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

(3) *For a national test for admission or a national test for credit.* VA will award educational assistance for the cost of a national test for admission or a national test for credit only when the eligible individual takes such test after July 31, 2011—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this chapter; and

(iii) When claim for reimbursement for the cost of the test is submitted within 1 year of the date the test is taken.

(Authority: 38 U.S.C. 3034(a), 3315A, 3323(a), 3452(b))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0706.)

(b) *Certification for program of education offered at an IHL.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the educational institution.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins on or after the eighth calendar day when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education offered by a non-college degree educational institution.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, when an eligible individual enrolls at a non-college degree educational institution, the beginning date of the award of educational assistance will be the later of—

(i) The date determined in paragraph (b) of this section, or

(ii) October 1, 2011.

(2) When an eligible individual enrolls at a non-degree educational institution for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent,

(ii) The date of affirmance (as defined in § 21.7020(b)(36)), or

(iii) October 1, 2011.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(3) When an individual enrolls in a program of apprenticeship or other on-the-job training, the beginning date of the award of educational assistance will be the later of—

(i) The first date of employment in the training position; or

(ii) October 1, 2011.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154, 2900–0178, 2900–0162, 2900–0353, and 2900–0576.)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving or is receiving a reduced rate of educational assistance under § 21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or

(2) The date the individual is released from the penal institution or correctional facility.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase (''kicker'') based on critical skills or specialty.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase (''kicker'') will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (f) of this section; or

(2) The first date on which the eligible individual is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (f) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9571, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9571, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.57 of this chapter; or

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified period of enrollment, VA will begin paying the monthly housing allowance—(1) If released or discharged before August 1, 2018, beginning the 1st day of the month following the date the individual was discharged; or (2) If released or discharged on or after August 1, 2018, beginning the day following the date the individual was discharged.

(l) *Election to receive benefits under 38 U.S.C. chapter 33.* (1) If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following—

(i) August 1, 2009;

(ii) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(iii) One year before the date the valid election request was received; or

(iv) The effective date of the election as requested by the claimant.

(2) If an individual is in receipt of benefits under 38 U.S.C. chapter 31 during a term, quarter, or semester, and requests to begin receiving benefits under 38 U.S.C. chapter 33 during that term, quarter, or semester, VA will begin paying—

(i) The monthly housing allowance under 38 U.S.C. chapter 33 effective the 1st of the month following the date of the request.

(ii) Net cost of tuition and fees, and the books and supplies stipend, the first day of the following term, quarter, or semester.

(m) *Fugitive felons.* An award of educational assistance to an otherwise eligible veteran, person, or dependent of a veteran will begin effective the date the individual ceases to be a fugitive felon, as shown by evidence, which may include evidence that a warrant for an offense involving flight is resolved by—

(1) Arrest;

(2) Surrendering to the issuing authority;

(3) Dismissal; or

(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 3323(c), 5313B)

(n) *National Guard members' retroactive beginning dates for claims submitted through September 30, 2012.* For any claim received up until September 30, 2012, for retroactive benefits based on service in the National Guard, the beginning date of the award will be the later of either (1) the date the

National Guard member satisfied the eligibility requirements in § 21.9520 of this title, or (2) August 1, 2009.

(o) *Child eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* If a child is eligible for entitlement under § 21.9520(d), the beginning date of the award of educational assistance will be no earlier than the earlier of the following dates—

(1) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(2) The date the child attains age 18.

(Authority: Pub. L. 111–32, 123 Stat. 1859)

■ 40. Amend § 21.9635 by:

■ a. Revising the section heading.

■ b. In the introductory text, removing ''The effective date'' and adding in its place ''During the period beginning August 1, 2009, and ending July 31, 2011, the effective date''.

■ c. Revising paragraphs (c), (d), and (w).

■ d. Redesignating paragraph (bb) as paragraph (cc).

■ e. Adding new paragraph (bb).

The revisions and addition read as follows:

§ 21.9635 Discontinuance dates—for provisions effective before August 1, 2011.

* * * * *

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training: effective the last date of attendance; and

(ii) Independent study or distance learning: effective on the official date of change in status under the practices of the educational institution.

(3) When an eligible individual withdraws from an approved correspondence course offered by an educational institution, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when—

(i) The withdrawal from one or more courses occurs during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances; or

(iii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

* * * * *

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 38 U.S.C. chapter 30, 31, 32, or 35; the Hostage Relief Act of 1980; or, effective August 1, 2011, 10 U.S.C. 510, may choose to receive educational assistance under another program.

* * * * *

(bb) *Fugitive felons.* VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(Authority: 38 U.S.C. 3323(c), 5313B)

* * * * *

■ 41. Add § 21.9636 to read as follows:

§ 21.9636 Discontinuance dates—for provisions effective after July 31, 2011.

The effective date of a reduction or discontinuance of educational assistance that occurs after July 31, 2011, will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment for the books and supplies stipend under § 21.9641(d) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the educational institution receives a lump sum payment for tuition and fees under § 21.9641(b) on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The educational institution will be required to return to VA any portion of the tuition and fees paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the educational institution.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9681(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, *e.g.,* monthly housing allowance under § 21.9641(c), if the eligible individual

dies while pursuing a program of education, the discontinuance date of educational assistance will be the date of death.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course or courses dropped during an educational institution's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective—(1) For withdrawals occurring before [EFFECTIVE DATE OF THE FINAL RULE] the end of the month during which the withdrawal occurred; (2) For withdrawals occurring on or after [EFFECTIVE DATE OF THE FINAL RULE], the last date of attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades after the first day of the term, VA will terminate educational assistance as follows—

(1) If the eligible individual withdraws from all courses after the school's drop/add period, and there are no mitigating circumstances, VA will terminate educational assistance effective the first day of the term from which the eligible individual withdrew.

(2) If the eligible individual withdraws from all courses with mitigating circumstances; withdraws during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training: effective the last date of attendance; and

(ii) Independent study or distance learning: effective on the official date of change in status under the practices of the educational institution.

(3) When an eligible individual withdraws from an approved correspondence course offered by an educational institution, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective either the end of the month during which the reduction occurred (in the case of reductions occurring before [EFFECTIVE DATE OF THE FINAL RULE]), or the last date of attendance (in the case of for reductions occurring on or after [EFFECTIVE DATE OF THE FINAL RULE]), when—

(i) The withdrawal from one or more courses occurs during the school's drop/add period or within the first 30 days of the enrollment period, whichever is earlier; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances; or

(iii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of—

(i) The last date permitted by the educational institution to complete the course;

(ii) The date the educational institution permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year, whichever is earlier, in which the disapproval is effective or in which VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) For a program of education at an IHL or a non-college degree institution, the end of the course or period of enrollment, as certified by the educational institution, in which the disapproval is effective; or

(2) For an apprenticeship or other on-the-job training program, the end of the program or the end of the academic year in which the disapproval occurred, whichever is earlier, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(b)(1), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the educational institution discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an educational institution, or an officer or employee of a State approving agency and an educational institution, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.* (1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9676(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The discontinuance of any monthly payments will be the end of the month during which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility or the end date of the enrollment period as certified by the educational institution, whichever is earlier.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Change in active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For tuition and fees, the last date of the certified enrollment period,

(ii) For monthly housing allowance, *see* paragraph (2), and

(iii) For the ''book stipend,'' the last date of the period covered by the book stipend payment.

(2) If an individual enters active duty during a certified period of enrollment, regardless of whether there is a reduction or termination of training, the discontinuance date for the monthly housing allowance will be—(A) For entry occurring before August 1, 2018, the end of the month during which the individual entered active; (B) For entry occurring on or after August 1, 2018, the date of entry onto active duty.

(Authority: 38 U.S.C. 3313(j))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an educational institution that regularly operates on the quarter or semester basis exhausts his or her entitlement under 38 U.S.C. chapter 33, the discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) The ending date for an individual enrolled in a course that is not scheduled on a quarter or semester basis, who exhausts his or her entitlement under 38 U.S.C. chapter 33 after he or she has completed more than half of the course, will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in a course that is not scheduled on a quarter or semester basis exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an educational institution on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an educational institution in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of

Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase (''kicker'') for Selected Reserve service.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase (''kicker'').

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under chapter 33 who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 31, 32, or 35; or the Hostage Relief Act of 1980 may choose to receive educational assistance under another program.

(1) VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607; 10 U.S.C. 510; 38 U.S.C. chapter 30, 32, or 35; or the Hostage Relief Act of 1980.

(2) For individuals in receipt of benefits under this chapter during a term, quarter, or semester who are requesting to receive benefits under 38 U.S.C. chapter 31, VA will terminate educational assistance under this chapter effective the first day of the subsequent enrollment period.

(3) An eligible individual may only request a change in receipt of benefits from 38 U.S.C. chapter 33 to 38 U.S.C. chapter 31 once per term, quarter, or semester.

(Authority: 38 U.S.C. 3322(a))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0154.)

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the end of the course or period of enrollment, as certified by the educational institution in which the withdrawal of accreditation occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9571.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9571(l).

(Authority: 38 U.S.C. 3319)

(bb) *Fugitive felons.* VA will not award educational assistance to an otherwise eligible Veteran or dependent of an otherwise eligible Veteran for any period during which the Veteran is a fugitive felon. The date of discontinuance of an award of educational assistance to a Veteran who is a fugitive felon or dependent of a Veteran who is a fugitive felon is the date of the warrant establishing that the individual is a fugitive felon or the date otherwise shown by evidence to be the date the individual became a fugitive felon.

(Authority: 38 U.S.C. 3323(c), 5313B)

(cc) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (bb) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

■ 42. Amend § 21.9640 by revising the section heading, introductory text, and paragraphs (a) and (d) to read as follows:

§ 21.9640 Rates of payment of educational assistance—for provisions effective before August 1, 2011.

For training that occurs before August 1, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraphs (a)(2) and (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Number of days	Percentage of maximum amounts payable
At least 36 months [1]	If aggregate service (*including* entry training) is 1,095 days or more days.	100
At least 30 continuous days (Must be discharged due to service-connected disability).		100
At least 30 months, but less than 36 months [1]	If aggregate service (*including* entry training) is from 910 to 1,094 days.	90
At least 24 months, but less than 30 months [1] [3]	If aggregate service (*including* entry training) is from 730 to 909 days.	[3] 80
At least 18 months, but less than 24 months [2] [3]	If aggregate service (*excluding* entry training) is from 545 to 729 days.	[3] 70
At least 12 months, but less than 18 months [2]	If aggregate service (*excluding* entry training) is from 365 to 544 days.	60
At least 6 months, but less than 12 months [2]	If aggregate service (*excluding* entry training) is from 180 to 364 days.	50
At least 90 days, but less than 6 months [2]	If aggregate service (*excluding* entry training) is from 90 to 179 days.	40

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.
[3] The 70/80% rule: If the aggregate service including training is at least 24 months but less than 30 months (730–909 days) BUT the aggregate service excluding training is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(Authority: 38 U.S.C. 3311, 3313)

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

* * * * *

(d) *Amounts payable for individuals on active duty.* (1) *Amounts payable for programs of education beginning on or after August 1, 2009, and on or before March 4, 2011.* Individuals on active duty who are pursuing a program of education during a quarter, semester, or term that starts during the period beginning August 1, 2009, and ending March 4, 2011, may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire term, quarter, or semester, as applicable. The amount payable will be the lowest of—

(i) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(ii) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment;

(iii) The lesser amount of paragraph (d)(i) or (ii) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§ 21.4020 and 21.9635(o);

(2) *Amounts payable for a program of education, on more than half-time basis, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* (i) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(ii) VA may, on behalf of an individual on active duty who is pursuing a program of education leading to a degree on more than half-time basis at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the lesser of the applicable percentage (as listed in paragraph (a) of this section) of the net cost for tuition and fees assessed by the institution or—

(A) For the academic year beginning August 1, 2011, $17,500;

(B) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 501(a), 3313(e))

(3) *Amounts payable for a program of education, on a half-time basis or less, leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(4) *Amounts payable for a program of education not leading to a degree and beginning after March 4, 2011, but before August 1, 2011.* Amounts payable for the individual will be calculated in accordance with paragraph (d)(1) of this section.

(Authority: 38 U.S.C. 3313, 3323(c))

■ 43. Add § 21.9641 to read as follows:

§ 21.9641 Rates of payment of educational assistance—for provisions effective after July 31, 2011.

For training that begins after July 31, 2011, unless otherwise noted, VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* (1) Except as provided in paragraph (a)(2) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Number of days	Percentage of maximum amounts payable
At least 36 months [1]	If aggregate service (*including* entry training) is 1,095 days or more days.	100
At least 30 continuous days (Must be discharged due to service-connected disability)		100
At least 30 months, but less than 36 months [1]	If aggregate service (*including* entry training) is from 910 to 1,094 days.	90
At least 24 months, but less than 30 months [1] [3]	If aggregate service (*including* entry training) is from 730 to 909 days.	[3] 80
At least 18 months, but less than 24 months [2] [3]	If aggregate service (*excluding* entry training) is from 545 to 729 days.	[3] 70
At least 12 months, but less than 18 months [2]	If aggregate service (*excluding* entry training) is from 365 to 544 days.	60
At least 6 months, but less than 12 months [2]	If aggregate service (*excluding* entry training) is from 180 to 364 days.	50
At least 90 days, but less than 6 months [2]	If aggregate service (*excluding* entry training) is from 90 to 179 days.	40

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.
[3] The 70/80% rule: If the aggregate service including training is at least 24 months but less than 30 months (730–909 days) BUT the aggregate service excluding training is at least 18 but less than 24 months (545 to 729 days), the individual will be deemed eligible at the 70% benefit level. This limitation is explicitly mandated by 38 U.S.C. 3311(e).

(2) *Amounts payable for individuals eligible for the Marine Gunnery Sergeant John David Fry Scholarship.* VA will apply 100 percent of the maximum amounts payable for pursuit of an approved program of education by an individual who is eligible for educational assistance under § 21.9520(d).

(Authority: 38 U.S.C. 3311(f))

(b) *Tuition and fees payable.* (1) *Program of education leading to a degree at public IHLs.* After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a degree at a public IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the net cost for in-State tuition and fees.

(Authority: 38 U.S.C. 3313(c)(1)(A)(i))

(2) *Program of education leading to a degree at non-public IHLs or foreign IHLs.* (i) After July 31, 2011, VA may, on behalf of an individual, who may be either on active duty or not on active duty and pursuing a program of education leading to a degree at a non-public or foreign IHL, issue a lump sum payment for the term, quarter, or semester directly to the IHL equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(A) The actual net cost for tuition and fees assessed by the institution; or

(B) For the academic year beginning August 1, 2011, $17,500; or

(C) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(c)(1)(A)(ii))

(3) *Program of education in pursuit of a certificate or other non-college degree at institutions other than IHLs.* On or after October 1, 2011, VA may, on behalf of an individual pursuing a program of education in pursuit of a certificate or other non-college degree at an institution other than an IHL, issue a lump sum payment for the term, quarter, or semester, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The actual net cost for in-State tuition and fees assessed by the institution; or

(ii) For the academic year beginning August 1, 2011, $17,500; or

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(A))

(4) *Full-time program of apprenticeship or other on-the-job training at institutions other than IHLs.* No tuition and fee amount is payable for this type of training.

(Authority: 38 U.S.C. 3313(g)(3)(B))

(5) *Program of education for flight training (regardless of the institution providing such program of education).* After September 30, 2011, upon receipt of certification for training completed by the individual and serviced by the educational institution, on behalf of an individual pursuing a program of education consisting of flight training, VA may issue a lump sum payment directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The actual net cost for in-State tuition and fees, or

(ii) For the academic year beginning August 1, 2011, $10,000;

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(C))

(6) *Program of education pursued exclusively by correspondence at an IHL or institution other than an IHL.* After September 30, 2011, on behalf of an individual pursuing program of education by correspondence at an IHL or institution other than an IHL, VA may issue a quarterly payment on a pro rata basis for the lessons completed by the individual and serviced by the educational institution during such quarter, directly to the educational institution equal to the applicable percentage (as listed in paragraph (a) of this section) of the lesser of—

(i) The net cost for tuition and fees, or

(ii) For the academic year beginning August 1, 2011, $8,500; or

(iii) For the academic year beginning on any subsequent August 1, the amount for the previous academic year, as increased under 38 U.S.C. 3015(h).

(Authority: 38 U.S.C. 3313(g)(3)(D))

(7) *No reduction in tuition and fee annual cap.* VA will not make a

reduction in the tuition and fee maximum amount payable during the academic year equal to the amount of tuition and fees charged for a course or courses from which the individual withdrew when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 501(a), 3323(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154, 2900–0178, 2900–0162, 2900–0353, and 2900–0576.)

(c) *Monthly housing allowance payable.* An individual who is pursuing a program of education leading to a degree at a domestic or foreign IHL, a program of education at a non-college degree institution, or an on-the-job or apprenticeship training can receive a monthly stipend (referred to as the ''monthly housing allowance''), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Residence training at domestic IHLs on more than half-time basis.* An individual, other than one on active duty, who is pursuing a program of education with at least one in-residence course and who has a rate of pursuit of greater than 50 percent at an IHL located in a State, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to—

(i) During the period beginning August 1, 2011, and ending July 31, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 using the ZIP code area in which all, or a majority, of the IHL in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0, or

(B) The individual's rate of pursuit, rounded to the nearest tenth.

(ii) On or after August 1, 2012, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 using the ZIP code or location code, whichever is applicable, in which all, or a majority, of the institution in which the individual is enrolled is located multiplied by the lesser of—

(A) 1.0, or

(B) The individual's rate of pursuit, rounded to the nearest tenth.

(Authority: 38 U.S.C. 3313(c)(1)(B)(i))

(2) *Residence training at foreign IHLs on more than half-time basis.* On or after August 1, 2011, an individual, other than one on active duty, who is pursuing a program of education leading to a degree at a foreign IHL with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, may receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to the national average of the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5, multiplied by the lesser of—

(i) 1.0, or

(ii) The individual's rate of pursuit, rounded to the nearest tenth.

(Authority: 38 U.S.C. 3313(c)(1)(B)(ii))

(3) *Residence training at non-college degree institutions on more than half-time basis.* After October 1, 2011, an individual, other than one on active duty, who is pursuing a program of education at a non-college degree institution (other than those listed in paragraph (c)(6) of this section) with at least one in-residence course and who has a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or a prorated amount for a partial month) of training pursued. The amount will be calculated in accordance with paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 3313(g)(3)(A)(ii))

(4) *Training pursued solely via distance learning on more than half-time basis.* After September 30, 2011, an individual, other than one on active duty, who is pursuing a program of education solely via distance learning at a rate of pursuit of greater than 50 percent, can receive a monthly housing allowance for each month (or prorated amount for a partial month) of training during each term, quarter, or semester, equal to 50 percent of the amount payable under paragraph (c)(2) of this section.

(Authority: 38 U.S.C. 3313(c)(1)(B)(iii))

(5) *On-the-job and apprenticeship training on full-time basis.* After September 30, 2011, an individual, other than one on active duty, pursuing a full-time program of apprenticeship or other on-the-job training may receive a monthly housing allowance—

(i) During the first 6-month period of the program, the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member with dependents in pay grade E–5 residing in the military housing area that encompasses all or a majority portion of the ZIP code area in which the employer is located.

(ii) During the second 6-month period of the program, 80 percent of the amount payable in paragraph (i) of this paragraph.

(iii) During the third 6-month period of the program, 60 percent of the amount payable in paragraph (i) of this paragraph.

(iv) During the fourth 6-month period of the program, 40 percent of the amount payable in paragraph (i) of this paragraph.

(v) During any month after the first 24 months of training, 20 percent of the amount payable in paragraph (i) of this paragraph.

(vi) In any month in which an individual pursuing training fails to complete 120 hours of training, the amount of the monthly housing stipend payable will be the amount determined by multiplying the applicable amount as determined by paragraphs (5)(i) through (5)(v) of this section by the figure determined as follows—

(A) The number of hours worked during the month, rounded to the nearest 8 hours; then

(B) Dividing the result by 120.

(C) Rounding the quotient to the nearest hundred.

(Authority: 38 U.S.C. 3313(g)(3)(B)(i))

(6) *Program of education for vocational flight training at institutions other than IHLs; Program of education pursued exclusively by correspondence; Program of education pursued on a half-time basis or less; Program of education pursued while on active duty.* No monthly housing allowance is payable for these types of training.

(Authority: 38 U.S.C. 3313(e), (f), (g)(3)(C), (g)(3)(D))

(7) *Rate payable during the academic year.* The monthly housing allowance payable during each academic year beginning on August 1 of a calendar year under paragraphs (c)(1) through (c)(5) of this section will be determined using the basic allowance for housing rates payable under 37 U.S.C. 403 in effect as of January 1 of each such calendar year.

(Authority: 38 U.S.C. 3313(i))

(8) *Rate protection.* The monthly housing allowance payable under paragraphs (c)(1) through (c)(5) of this section will not decrease as long as the individual—

(i) Has not had a break in training that exceeds 6 months. An individual called to active duty (during an enrollment period or 6-month grace period) will not see a decrease as long as the individual resumes training at the educational institution within 6 months from the release from active duty; and

(ii) Previously received the monthly housing allowance based on the same type of training (residence, distance, foreign) at the same educational institution. A change in facility (transferring to a different school or a different branch of the same school) constitutes a change in educational institution.

(Authority: 38 U.S.C. 501(a), 3323(c))

(9) *Concurrent eligibility for more than one monthly housing stipend rate.* In the event that an individual is concurrently eligible for more than one monthly housing stipend rate, the housing stipend will be paid at the highest rate for which the individual qualifies.

(Authority: 38 U.S.C. 501(a), 3323(c))

(d) *Books, supplies, and equipment stipend payable.* An individual who is pursuing a program of education at an IHL, non-college degree institution, or an individual pursuing on-the-job or apprenticeship training can receive an amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend''), subject to the applicable percentage (as listed in paragraph (a) of this section), as follows—

(1) *Book stipend for training pursued at an IHL.* (i) The maximum amount payable to an individual pursuing training at an IHL is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). The lump sum payment for each term, quarter, or semester is equal to $41.67 ($1,000 divided by 24 credit hours) multiplied by the number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(A) Before October 1, 2011, an eligible individual, other than one on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit hours if enrollment is reported in clock hours) in a single academic year.

(B) On or after October 1, 2011, an eligible individual, including an individual on active duty, may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent credit hours if enrollment is reported in clock hours) in a single academic year.

(ii) In no event may the amount paid during an academic year exceed $1,000.

(2) *Book stipend for training pursued at a non-college-degree institution and on-the-job or apprenticeship training.* After September 30, 2011, an individual pursuing a program of education at a non-college degree institution (other than those listed in paragraph (d)(3) of this section) or full-time on-the-job or apprenticeship training can receive a lump sum payment equal to $83 for each month (or a prorated amount for a partial month) of training pursued.

(Authority: 38 U.S.C. 3313(g)(3)(A), (B))

(3) *Program of education for vocational flight training at institutions other than IHLs and program of education pursued exclusively by correspondence.* No book stipend is payable for these types of training.

(Authority: 38 U.S.C. 3313(c),(e),(f),(g))

(e) *Publication of educational assistance rates.* VA will publish the maximum amount of tuition and fees payable each academic year in the ''Notices'' section of the **Federal Register** and on the GI Bill website at *http://www.GIBill.va.gov.*

(Authority: 38 U.S.C. 3313, 3323(c))

■ 44. Amend § 21.9645 by revising paragraphs (a)(1)(iii), (b)(1)(ii), and (c) to read as follows:

§ 21.9645 Refund of basic contribution to chapter 30.

(a)(1) * * *

(iii) He or she is a member of the Armed Forces who is making contributions as provided in § 21.7042(g) towards educational assistance under 38 U.S.C. chapter 30.

* * * * *

(b) * * *

(1) * * *

(ii) 36 for individuals making contributions towards educational assistance under 38 U.S.C. chapter 30 in accordance with § 21.7042(g).

* * * * *

(c) *Timing of payment.* The amount payable under this section will only be issued to the individual who made the contribution when the individual is in receipt of the monthly housing allowance payable under § 21.9640(b) or § 21.9641(c) at the time his or her entitlement exhausts. No payment will be made if the individual who made the contributions is not in receipt of a monthly housing allowance when entitlement exhausts.

* * * * *

■ 45. Amend § 21.9650 by revising paragraphs (a)(2), (b)(2)(ii), (b)(3), (c)(2)(ii), and (c)(3) to read as follows:

§ 21.9650 Increase in educational assistance.

* * * * *

(a) * * *

(2) The increase (''kicker'') amount payable under paragraph (a)(1) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance during the term, quarter, or semester—

(i) For the period beginning August 1, 2009, and ending July 31, 2011, under § 21.9640(b)(1)(ii) or (b)(2)(ii), or

(ii) For the period after July 31, 2011, under § 21.9641(c).

(Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) * * *

(2) * * *

(ii)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the individual's rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (b)(2)(i) of this section multiplied by the lesser of—

(1) 1.0, or

(2) The individual's rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase (''kicker'') amount payable under paragraph (b) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(Authority: 38 U.S.C. 3015(d), 3316; Pub. L. 110–252, 122 Stat. 2378, Pub. L. 111–377, 124 Stat. 4119)

(c) * * *

(2) * * *

(ii)(A) For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, the full-time training amount under paragraph (c)(2)(i) of this section multiplied by the individual's rate of pursuit.

(B) For training pursued after July 31, 2011, the full-time training amount under paragraph (c)(2)(i) multiplied by the lesser of—

(*1*) 1.0, or

(*2*) The individual's rate of pursuit, rounded to the nearest multiple of 10.

(3) The increase (''kicker'') amount payable under paragraph (c) of this section will be paid to the individual—

(i) As a lump sum for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33, if training is pursued during the period beginning August 1, 2009, and ending July 31, 2011; or

(ii) On a monthly basis, for training pursued after July 31, 2011.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3316; Pub. L. 110–252, 122 Stat. 2378; Pub. L. 111–377, 124 Stat. 4119)

§ 21.9655 [Amended]

■ 46. Amend § 21.9655, in paragraph (a)(2), by removing ''or (b)(2)(ii)'' and adding in its place '', (b)(2)(ii), or § 21.9641(c)''.

■ 47. Amend § 21.9665 by revising the section heading and introductory text to read as follows:

§ 21.9665 Reimbursement for licensing or certification tests—for provisions effective before August 1, 2011.

An eligible individual is entitled to receive reimbursement for taking one approved licensing or certification test during the period beginning August 1, 2009, and ending July 31, 2011. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test is the lesser of the following:

* * * * *

■ 48. Add § 21.9667 to read as follows:

§ 21.9667 Reimbursement for licensing or certification tests—for provisions effective after July 31, 2011.

An individual eligible for benefits under the Post-9/11 GI Bill is entitled to receive reimbursement for taking any number of approved licensing or certification tests after July 31, 2011. The amount of reimbursement VA will pay for an approved licensing or certification test taken after July 31, 2011, is the least of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test;

(b) $2,000; or

(c) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of payment for licensing and tests, as specified in § 21.9561(f)(1)(ii).

(Authority: 38 U.S.C. 3315)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0695.)

■ 49. Add § 21.9668 to read as follows:

§ 21.9668 Reimbursement for national tests.

An eligible individual is entitled to receive reimbursement for taking a national test for admission or a national test for credit after July 31, 2011. The amount of reimbursement VA will pay for an approved national test for admission or a national test for credit taken after July 31, 2011, is the lesser of the following:

(a) The fee charged for the test, not including any optional costs not required for the testing process; or

(b) The amount equal to the number of whole months of remaining entitlement available to the individual at the time of payment for the test multiplied by the rate for one month of payment for national tests, as specified in § 21.9561(f)(1)(ii).

(Authority: 38 U.S.C. 3315A)

■ 50. Amend § 21.9675 by revising the section heading, introductory text, and paragraph (c)(2) to read as follows:

§ 21.9675 Conditions that result in reduced rates or no payment—for provisions effective before August 1, 2011.

During the period beginning August 1, 2009, and ending July 31, 2011, the payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

* * * * *

(c) * * *

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be—

(i)(A) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program; plus

(B) The amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment not to exceed $1,000 each academic year.

(ii) The amounts payable under paragraph (c)(2)(i) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9640(a).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

■ 51. Add § 21.9676 to read as follows:

§ 21.9676 Conditions that result in reduced rates or no payment—for provisions effective after July 31, 2011.

After July 31, 2011, the payment rates as established in §§ 21.9641 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No monthly housing allowance for some incarcerated individuals.* An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will not receive a monthly housing allowance.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) An individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction will receive—

(i) The net costs for tuition and fees not paid by any other form of financial assistance, not to exceed the amounts specified in § 21.9641(b); and

(ii) The amount of necessary books, supplies, and equipment not paid by any other form of financial assistance, not to exceed $1,000 each academic year.

(2) The amounts payable under paragraph (c)(1) of this section will be prorated based on the individual's eligibility percentage as determined in § 21.9641(a).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (*see* § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

■ 52. Amend § 21.9680 by revising the section heading and adding introductory text to read as follows:

§ 21.9680 Certifications and release of payments—for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

* * * * *

■ 53. Add § 21.9681 to read as follows:

§ 21.9681 Certifications and release of payments—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011—

(a) *Payee.* (1) VA will make payment of the appropriate amount of tuition and fees, as determined under § 21.9641, directly to the educational institution as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.* (1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance Top-Up; one seeking reimbursement for taking an approved licensing or certification test; one seeking reimbursement for a national test for admission or a national test for credit; or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9721 and provided its Taxpayer Identifying Number (TIN) and/or Automated Clearing House (ACH) information in accordance with section 7701(c)(1) of title 31, U.S.C .

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689; 31 U.S.C. 7701(c)) (The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0073).

(2) VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The educational institution at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's educational institution;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment is preceded by a period of nonpayment of 30 days or more.

(G) The educational institution or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the educational institution for delivery to the eligible individual. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if:

(A) The educational institution demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To the educational institution, on behalf of an eligible individual, for the appropriate amount of tuition and fees;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the $500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) [Reserved]

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provision in this section under control numbers 2900–0695 and 2900–0706.)

(6) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved national test for admission or a national test for credit only after the eligible individual has submitted a claim for the test to VA that includes the following information:

(i) The name of the test;

(ii) The name of the organization offering the test;

(iii) The date the eligible individual took the test;

(iv) The cost of the test; and

(v) Such other information as the Secretary may require.

(Authority: 38 U.S.C. 3315A)

(The Office of Management and Budget has approved the information collection provision in this section under control numbers 2900–0695, 2900–0698, and 2900–0706.)

(7) *Payment for temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for a temporary school closing in accordance with the provisions of § 21.4138(g) of this chapter.

(Authority: 38 U.S.C. 3680(a))

(c) *Rural relocation benefit.* VA will make the $500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9721;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

(*1*) DD Form 214, Certification of Release or Discharge from Active Duty; or

(*2*) The most recent Federal income tax return; or

(*3*) The most recent State income tax return; or

(*4*) Rental/lease agreement; or

(*5*) Mortgage document; or

(*6*) Current real property assessment; or

(*7*) Voter registration card.

(B) An individual using entitlement granted under § 21.9571 who, because he or she resides with the transferor or, in the case of a child, a parent, who cannot provide any of the documents in paragraph (c)(2)(ii) of this section, may submit as proof of residence any document in paragraphs (c)(2)(ii)(A)(*2*) through (*7*) of this section bearing the name and current address of the transferor or, in the case of a child, a parent; and

(C) VA must determine that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation.

(iii) *Proof of relocation.* An individual must provide proof that he or she either: (A) physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2)(ii) of this section as the beginning point and the address of the educational institution as the ending point; or (B) traveled by air to physically attend an institution of higher learning for pursuit of such a program of education because the individual could not travel to the educational institution by land due to the absence of road or other infrastructure. An individual must provide airline receipts for travel with a departure and destination airport within reasonable distance from the home of residence and the educational institution.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

■ 54. Amend § 21.9690 by revising the section heading and adding introductory text to read as follows:

§ 21.9690 Nonduplication of educational assistance—for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011—

* * * * *

■ 55. Add § 21.9691 to read as follows:

§ 21.9691 Nonduplication of educational assistance—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011—

(a)(1) *Nonduplication—Concurrent benefits.* Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(i) 10 U.S.C. 510 (National Call to Service);

(ii) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(iii) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(iv) 10 U.S.C. chapter 106a (Section 901, Educational Assistance Test Program);

(v) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(vi) 38 U.S.C. chapter 31 (Veteran Readiness and Employment Program);

(vii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(viii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance); or

(ix) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96–342)

(2) An individual who is eligible for educational assistance under more than one program listed in paragraph (a)(1) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(b) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

(c) *Nonduplication—Transferred benefits and Fry Scholarship.* An individual entitled to educational assistance under § 21.9520(d) and because of a transfer of entitlement under § 21.9571—

(1) May not receive educational assistance under both provisions concurrently.

(2) Must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under a provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 3322(e), 3323(c))

(d) *Nonduplication—Transferred benefits.* An individual who is entitled to educational assistance based on a transfer of entitlement under § 21.9571 from more than one individual—

(i) May not receive assistance based on transfers from more than one individual concurrently.

(ii) Must specify in writing whose entitlement he or she wishes to use at any one time. The individual may request to use benefits transferred to him or her by any of the transferors at any time, but may not change whose entitlement he or she wishes to use from one individual to another more than once during a term, quarter, or semester. Except in cases when an individual exhausts his or her transferred entitlement during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 3322(g), 3323(c))

(e) *Nonduplication—Fry Scholarship and compensation and pension.* The commencement of a program of education based on eligibility for educational assistance under § 21.9520(d) by an eligible individual is a bar to—

(1) Subsequent payments of dependency and indemnity compensation or pension based on the death of a parent to the eligible individual when the eligible individual attains 18 years of age.

(2) Increased rates, or additional amounts, of compensation, dependency and indemnity compensation, or pension paid on account of the eligible individual.

(Authority: 38 U.S.C. 3322(f))

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0098.)

(f) *Nonduplication—Fry Scholarship.* (1) An individual who is entitled to educational assistance based on the death of more than one parent under § 21.9520(d) may not receive assistance under § 21.9520(d) for the same enrollment period based on the deaths of both parents.

(2) The individual must specify in writing on which parent's death to base his or her entitlement. The individual may request to base entitlement on either parent's death at any time, but may not change on whose death he or she chooses to base entitlement more than once during a term, quarter, or semester. Except in cases where an individual exhausts entitlement that is based on one parent's death during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 501(a), 3323(c))

(g) *Nonduplication—Entitlement based on individual's active duty service.* (1) An individual who is entitled to educational assistance under § 21.9520(a) or (b) and who is entitled to educational assistance under § 21.9520(d) or § 21.9571 may not receive educational assistance based on his or her own period of service and educational assistance based on someone else's service concurrently.

(2) The individual must specify in writing the provision under which he or she wishes to receive benefits. The individual may request to receive benefits under either provision at any time, but may not change the provision under which he or she will receive benefits more than once during a term, quarter, or semester. Except in cases when an individual exhausts entitlement under one provision during a term, quarter, or semester, the request will be effective the beginning date of the enrollment period following the request.

(Authority: 38 U.S.C. 501(a), 3323(c))

(h) *Nonduplication—Eligibility based on a single event or period of service.* (1) *Active duty service.* (i) An individual with qualifying active duty service in the Armed Forces that may be used to establish eligibility for educational assistance under chapter 30, 32, or 33 of 38 U.S.C., and chapter 1606 or 1607 of 10 U.S.C., must make an irrevocable election in writing specifying under which program to establish eligibility and to which program to credit service.

(ii) An individual may not request that portions of a single period of service be credited to different benefit programs. VA considers a single period of service to be one from which the individual is discharged or released, including a discharge for immediate reenlistment.

(2) *Assistance based on parent's service.* A child eligible for educational assistance under § 21.9520(d) and chapter 35 of 38 U.S.C., based on the parent's death must make an irrevocable election in writing specifying which benefit he or she wishes to receive.

(Authority: 38 U.S.C. 501(a), 3322(h))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0154 and 2900–0098.)

■ 56. Amend § 21.9695 by:

■ a. In paragraph (a), removing ''institutions of higher learning'' and adding in its place ''educational institutions''.

■ b. Removing ''institution of higher learning'' each place it appears and adding in each place ''educational institution''.

■ c. Revising paragraph (b)(3).

■ d. In paragraph (b)(4)(ii)(A), removing ''established charges'' and adding in its place ''tuition and fees''.

The revision reads as follows:

§ 21.9695 Overpayments.

* * * * *

(b) * * *

(3)(i) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the educational institution on behalf of the individual, constitutes a liability of the educational institution if:

(A) VA determines that the overpayment is the result of willful or negligent false certification by the educational institution, or willful or negligent failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(B) The student never attends classes for which he or she was certified (regardless of the reason for non-attendance);

(C) The student completely withdraws from all courses on or before the first day of the certified period of enrollment;

(D) The student dies during the term (see §§ 21.9635(a)(2) and 21.9636(a)(2));

(E) The educational institution receives a payment for the wrong student;

(F) The educational institution receives a duplicate payment for a student;

(G) The educational institution receives a payment in excess of the amount certified to VA on the enrollment certification; or

(H) The educational institution submits an amended enrollment

certification to correctly report a reduced amount of tuition and fee charges, reduced Yellow Ribbon Program contributions, or reduced amounts for both tuition and fees and Yellow Ribbon Program contributions.

(ii) In determining whether an overpayment resulting from the actions listed in paragraph (b)(3)(i) of this section should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

* * * * *

■ 57. Amend § 21.9700 by:

■ a. Removing ''established charges'' each place it appears and adding in its place ''tuition and fees''.

■ b. Removing ''38 U.S.C. chapter 3313(c)(1)(A)'' each place it appears and adding in each place ''paragraphs (b) and (c) of § 21.9640 and paragraphs (b)(1) and (b)(2) of § 21.9641''.

■ c. Revising paragraph (b).

■ d. In paragraph (d)(6)(i), removing ''undergraduate'' and adding in its place ''certificate, undergraduate''.

■ e. In paragraph (f), removing ''school'' and adding in its place ''IHL''.

■ f. In paragraph (g), removing ''school's'' and adding in its place ''IHL's''.

The revision reads as follows:

§ 21.9700 Yellow Ribbon Program.

* * * * *

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100-percent educational assistance rate (based on service requirements as shown in § 21.9640(a) or § 21.9641(a), whichever is applicable) or to their designated dependents using entitlement transferred under § 21.9570 or § 21.9571, whichever is applicable, or effective August 1, 2018, to individuals using Fry Scholarship entitlement under § 21.9520(d) who are pursuing training at an eligible IHL.

* * * * *

■ 58. Revise § 21.9710 to read as follows:

§ 21.9710 Pursuit.

Except for an eligible individual seeking tuition assistance Top-Up or reimbursement for taking an approved national test for admission, a national test for credit, or a licensing or certification test, the individual's educational assistance depends upon his or her pursuit of a program of education.

(Authority: 38 U.S.C. 3323(c))

§ 21.9715 [Amended]

■ 59. Amend § 21.9715 by:

■ a. In the introductory text, removing ''§ 21.9640(b)(1)(ii) or (b)(2)(ii)'' and adding in its place ''§ 21.9640(b)(1)(ii), (b)(2)(ii), or § 21.9641(c), whichever is applicable''.

■ b. Removing ''the institution of higher learning'' each place it appears and adding in each place ''the educational institution''.

■ c. In paragraph (b)(1), removing ''an institution of higher learning'' and adding in its place ''the educational institution''.

■ d. In paragraph (b)(2), removing ''§ 21.9730'' and adding in its place ''§ 21.9735''.

■ 60. Amend § 21.9720 by revising the section heading and the introductory text to read as follows:

§ 21.9720 Certification of enrollment—for provisions effective before August 1, 2011.

For training pursued during the period beginning August 1, 2009, and ending July 31, 2011, an IHL must certify an eligible individual's enrollment before he or she may receive educational assistance, except as stated in § 21.9680.

* * * * *

■ 61. Add § 21.9721 to read as follows:

§ 21.9721 Certification of enrollment—for provisions effective after July 31, 2011.

For training pursued after July 31, 2011, an educational institution must certify an eligible individual's enrollment before he or she may receive educational assistance, except as stated in § 21.9681.

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of advance payment, require educational institutions to certify the enrollments of eligible individuals who are seeking an advance payment (as described in § 21.9715). VA does not require organizations or entities offering a national test for admission, a national test for credit, or a licensing or certification test to certify that the eligible individual took the test. In all other cases, the educational institution must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Educational institutions that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report each term, quarter, or semester separately.

(2) Educational institutions organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(The Office of Management and Budget has approved the information collection provision in this section under control number 2900–0073.)

§ 21.9725 [Amended]

■ 62. Amend § 21.9725 by removing ''institution of higher learning'' each place it appears and adding in each place ''educational institution'' and by removing ''institution of higher learning's'' and adding in its place ''educational institution's''.

§ 21.9735 [Amended]

■ 63. Amend § 21.9735 by removing ''individuals and institutions of higher learning'' and adding in its place ''eligible individuals and educational institutions''.

§ 21.9740 [Amended]

■ 64. Amend § 21.9740 by removing ''institution of higher learning'' each place it appears and adding in each place ''educational institution'' and by removing ''institution of higher learning's'' each place it appears and adding in each place ''educational institution's''.

■ 65. Amend § 21.9750 by:

■ a. In paragraph (a), removing ''institution of higher learning'' and adding in its place ''educational institution''.

■ b. Revising paragraphs (b) introductory text and (b)(1).

The revision reads as follows:

§ 21.9750 Course measurement.

* * * * *

(b) *Measurement of courses reported in clock hours at IHLs.* (1) If the courses pursued at an IHL are measured in clock hours, VA will convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(2) of this section rounded to the nearest 100th by—

(A) If the educational institution measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the educational institution by the number of clock hours considered full-time at the educational institution.

(B) If the educational institution only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the educational institution.

* * * * *

§ 21.9765 [Amended]

■ 66. Amend § 21.9765 by removing ''institution of higher learning'' and adding in its place ''educational institution''.

[FR Doc. 2023–08884 Filed 5–23–23; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Commercial and Industrial Refrigeration; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2023–0043; FRL–10125–1–OAR]

RIN 2060–AV77

Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Commercial and Industrial Refrigeration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action proposes to list certain substances in the refrigeration and air conditioning sector. Specifically, EPA proposes to list several substitutes as acceptable, subject to use conditions, for retail food refrigeration, commercial ice machines, industrial process refrigeration, cold storage warehouses, and ice skating rinks. Through this action, EPA is proposing to incorporate by reference standards which establish requirements for commercial refrigerating appliances and commercial ice machines, safe use of flammable refrigerants, and safe design, construction, installation, and operation of refrigeration systems. This action also proposes to exempt propane, in the refrigerated food processing and dispensing end-use, from the prohibition under the Clean Air Act (CAA) on knowingly venting, releasing, or disposing of substitute refrigerants, on the basis of current evidence that the venting, release, or disposal of this substance in this end-use does not pose a threat to the environment.

DATES: Comments must be received on or before July 10, 2023. Any party requesting a public hearing must notify the contact listed under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on May 30, 2023. If a virtual public hearing is held, it will take place on or before June 8, 2023, and further information will be provided on EPA's Stratospheric Ozone website at *https://www.epa.gov/snap.*

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2023–0043, 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, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* 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 rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov* or in hard copy at the Air and Radiation Docket at the address above. For further information on EPA Docket Center services and the current status, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Gerald Wozniak, Stratospheric Protection Division, Office of Atmospheric Protection (Mail Code 6205A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9624; email address: *wozniak.gerald@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy (SNAP) program are available on EPA's SNAP website at *https://www.epa.gov/snap/snap-regulations.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Executive Summary and Background

EPA is proposing new and revised listings after its evaluation of human health and environmental information for these substitutes under the Significant New Alternatives Policy (SNAP) program. The Agency is proposing action on these new listings in the refrigeration and air conditioning (AC) sector based on the information that EPA has included in the docket. This proposed action would provide new refrigerant options, thereby increasing flexibility for industry, in specific uses.

This action proposes to list new alternatives for the refrigeration and AC sector. Specifically, EPA is proposing to:

- List hydrofluoroolefin (HFO)–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new retail food refrigeration equipment (*i.e.,* stand-alone units, remote condensing units, supermarket systems, and refrigerated food processing and dispensing equipment);
- List R–454A as acceptable, subject to use conditions, for use in new remote condensing units and supermarket systems;
- List R–290 (propane) as acceptable, subject to use conditions, for use in new refrigerated food processing and dispensing equipment and revise the existing use conditions for R–290 in new stand-alone units.
- List hydrofluorocarbon (HFC)–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new commercial ice machines;
- Revise the existing use conditions for R–290 for use in new self-contained commercial ice machines;
- List HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new chillers for industrial process refrigeration (IPR);
- List HFC–32 and R–454B as acceptable, subject to use conditions, for use in new chillers for IPR;
- List HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new cold storage warehouses; and
- List HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new ice skating rinks using a remote compressor.

In general, the proposed use conditions are consistent across the various substitutes and end-uses contained in this proposal. Because of this similarity, EPA discusses the proposed use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed are:

(1) These refrigerants may be used only in new equipment, designed specifically and clearly identified for use with the refrigerant. None of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment.

(2) These refrigerants may be used only in equipment that meet all requirements listed in the 2nd edition, dated October 27, 2021, of UL [1] Standard 60335–2–89, ''Household and Similar Electrical Appliances—Safety—Part 2–89: Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor'' (hereafter ''UL 60335–2–89''). For refrigerants that already have listings that incorporate by reference earlier UL standards, EPA is proposing a transition period when equipment may meet either the earlier UL standard or UL 60335–2–89.

(3) These refrigerants must be used with warning labels on the equipment and packaging that are similar to or match verbatim those required by UL 60335–2–89.

(4) Equipment must be marked with distinguishing red color-coded hoses and piping to indicate use of a flammable refrigerant and marked service ports, pipes, hoses, and other devices through which the refrigerant is serviced.

(5) These refrigerants must be used with equipment and packaging marked with the Global Harmonized System of Classification and Labelling of Chemicals (GHS) symbol for hazard category 1 flammable gases.

Additional use conditions specific to particular end-uses may also apply and are discussed with each proposed listing. The regulatory text of the proposed listings, including the proposed use conditions and further information, appears in tables at the end of this document. The proposed new listings would appear in appendix Y to 40 Code of Federal Regulations (CFR) part 82, subpart G. The proposed revised listings for R–290 in new retail food refrigeration equipment (stand-alone units only) and in new self-contained commercial ice machines would appear, respectively, in appendices R and V to 40 CFR part 82, subpart G.

There may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the listed substitutes that are not included in the information in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition or Department of Transportation (DOT) requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from commercial or industrial refrigeration equipment are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

In addition, EPA is proposing to exempt R–290 used in the refrigerated food processing and dispensing end-use from the CAA section 608(c)(2) prohibition on knowingly venting, releasing, or disposing of substitute refrigerants on the basis of current evidence that the venting, release, or disposal of this substance in this end-use does not pose a threat to the environment.

SNAP Program Background

The SNAP program implements CAA section 612. Several major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon (CFC), halon, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbon, and chlorobromomethane) or class II (hydrochlorofluorocarbon (HCFC)) ozone-depleting substance (ODS) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes that it finds to be unacceptable for specific uses and to publish a corresponding list of acceptable substitutes for specific uses.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c).

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before a new or existing chemical is introduced into interstate commerce for significant new use as a substitute for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

The regulations for the SNAP program are promulgated at 40 CFR part 82, subpart G, and the Agency's process for reviewing SNAP submissions is described in regulations at 40 CFR 82.180. Under these rules, the Agency has identified five types of listing decisions: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions.'' Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses in the sector. After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions'' (40 CFR 82.180(b)(2)). For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' Under the narrowed use limit, users intending to adopt these substitutes ''must ascertain that other alternatives are not technically feasible.'' (40 CFR 82.180(b)(3)).

In making decisions regarding whether a substitute is acceptable or unacceptable, and whether substitutes present risks that are lower than or comparable to risks from other substitutes that are currently or potentially available in the end-uses under consideration, EPA examines the following criteria in 40 CFR 82.180(a)(7): (i) atmospheric effects and related health and environmental impacts; (ii) general population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) ecosystem risks; (iv) occupational risks; (v) consumer risks; (vi) flammability; and (vii) cost and availability of the substitute.

Many SNAP listings include ''comments'' or ''further information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute

[1] UL, formerly known as Underwriters Laboratories.

under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The ''further information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus, many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

For additional information on the SNAP program, visit the SNAP website at *https://www.epa.gov/snap.* The full lists of acceptable substitutes for ODS in all industrial sectors are available at *https://www.epa.gov/snap/snap-substitutes-sector.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the initial SNAP rulemaking published March 18, 1994 (59 FR13044), codified at 40 CFR part 82, subpart G. SNAP decisions and the appropriate **Federal Register** citations can be found at *https://www.epa.gov/snap/snap-regulations.* Substitutes listed as unacceptable; acceptable, subject to narrowed use limits; or acceptable, subject to use conditions, are also listed in the appendices to 40 CFR part 82, subpart G.

Background on requirements concerning venting, release, or disposal of refrigerants and refrigerant substitutes under CAA section 608

The statutory requirements concerning venting, release, or disposal of ODS refrigerants and substitutes for ODS used as refrigerants are under CAA section 608, and EPA's authority to promulgate the regulatory revisions in this action is based in part on CAA section 608. Section 608 of the Act, as amended, titled *National Recycling and Emission Reduction Program,* requires, among other things, that EPA establish regulations governing the use and disposal of ODS used as refrigerants, such as certain CFCs and HCFCs, during the service, repair, or disposal of appliances and IPR.[2] Section 608(c)(1) provides that it is unlawful for any person in the course of maintaining, servicing, repairing, or disposing of an appliance (or IPR) to knowingly vent, or otherwise knowingly release or dispose of, any class I or class II substance used as a refrigerant in that appliance (or IPR) in a manner which permits the ODS to enter the environment.

Section 608(c)(2) extends the prohibition in section 608(c)(1) to knowingly venting or otherwise knowingly releasing or disposing of any refrigerant substitute for class I or class II substances by any person maintaining, servicing, repairing, or disposing of appliances or IPR. This prohibition applies to any substitute refrigerant unless the Administrator determines that such venting, releasing, or disposing does not pose a threat to the environment. Thus, section 608(c) provides EPA authority to promulgate regulations to interpret, implement, and enforce this prohibition on venting, releasing, or disposing of class I or class II substances and their refrigerant substitutes, which we also refer to as the ''venting prohibition'' in this proposed action. EPA's authority under section 608(c) includes authority to implement section 608(c)(2) by exempting certain substitutes for class I or class II substances from the venting prohibition when the Administrator determines that such venting, release, or disposal does not pose a threat to the environment.

EPA issued a rule on March 12, 2004 (69 FR 11946), and a second rule on April 13, 2005 (70 FR 19273), clarifying how the venting prohibition in section 608(c) applies to substitutes for CFC and HCFC refrigerants (*e.g.,* HFCs and perfluorocarbons (PFCs)). These regulations are codified at 40 CFR part 82, subpart F. In relevant part, they provide that no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with the exception of certain specified substitutes in the specified end-uses, as provided in 40 CFR 82.154(a).

EPA has exempted from the venting prohibition several hydrocarbon (HC) refrigerant substitutes, including R–290, in specific end-uses where the Agency had also listed the substitutes as acceptable, subject to use conditions, under the SNAP program. See, for example, EPA's regulations issued May 23, 2014 (79 FR 29682), April 10, 2015 (80 FR 19453), and December 1, 2016 (81 FR 86778).[3] Those regulatory exemptions do not apply to blends of HCs with other refrigerants or containing any amount of any CFC, HCFC, HFC, or PFC. The current exemptions for R–290 by end-use are codified at 40 CFR 82.154(a)(1)(viii).

In establishing those exemptions, EPA determined that for the purposes of CAA section 608(c)(2), the venting, release, or disposal of such HC refrigerant substitutes in the specified end-uses does not pose a threat to the environment, considering both the inherent characteristics of these substances and the limited quantities used in the relevant applications., see, *e.g.,* December 1, 2016 (81 FR 86778). EPA further concluded that other authorities, controls, or practices that apply to such refrigerant substitutes help to mitigate environmental risk from the release of those saturated HC refrigerant substitutes.

B. Does this action apply to me?

The following list identifies regulated entities that may be affected by this rule and their respective North American Industrial Classification System (NAICS) codes:

- Plumbing, Heating, and Air Conditioning Contractors (NAICS 238220)
- All Other Basic Organic Chemical Manufacturing (NAICS 325199)
- Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS 333415)
- Refrigeration Equipment and Supplies Merchant Wholesalers (NAICS 423740)
- Recyclable Material Merchant Wholesalers (NAICS 423930)
- Supermarkets and Other Grocery (except Convenience) Stores (NAICS 445110)
- Convenience Stores (NAICS 445120)
- Limited-Service Restaurants (NAICS 722211)
- Appliance Repair and Maintenance (NAICS 811412)

[2] Additional information about the 608 Refrigerant Management Program is available in EPA's rules implementing that program, such as rules published on May 14, 1993 (58 FR 28660), November 18, 2016 (81 FR 82272), and March 11, 2020 (85 FR 14150).

[3] The United States Court of Appeals for the District of Columbia Circuit (''the court'') issued a partial vacatur of the December 1, 2016 rule '''to the extent' it required manufacturers to replace already lawfully installed HFC substitutes.'' *See Mexichem Fluor, Inc.* v. *EPA,* Judgment, Case No. 17–1024 (D.C. Cir., April 5, 2019), 760 Fed. Appx. 6 (Mem). The court's decision on the December 1, 2016 rule did not affect the portion of that rule that exempted certain HC refrigerant substitutes from the venting prohibition. This proposed rule is not EPA's response to the court's decision.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, business, or organization could be affected by this action, you should carefully examine the regulations at 40 CFR part 82, subpart G, and the proposed revisions. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in the preamble of this document:

AC—Air Conditioning
AEL—Acceptable Exposure Limit
AIHA—American Industrial Hygiene Association
ANSI—American National Standards Institute
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ASTM—American Society for Testing and Materials
ATEL—Acute Toxicity Exposure Limit
CAA—Clean Air Act
CAS Reg. No.—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
DOE—United States Department of Energy
DOT—United States Department of Transportation
DX—Direct Heat Exchange
EPA—United States Environmental Protection Agency
FR—Federal Register
GHS—Global Harmonized System of Classification and Labelling of Chemicals
GWP—Global Warming Potential
HC—Hydrocarbon
HCFC—Hydrochlorofluorocarbon
HCFO—Hydrochlorofluoroolefin
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HP—Heat Pump
IBC—International Building Code
ICC—International Code Council
ICF—ICF International, Inc.
IEC—International Electrotechnical Commission
IPCC—Intergovernmental Panel on Climate Change
IPR—Industrial Process Refrigeration
ISO—International Organisation for Standardisation
LFL—Lower Flammability Limit
MIR—Maximum Incremental Reactivity
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industrial Classification System
NARA—National Archives and Records Administration
ODP—Ozone Depletion Potential
ODS—Ozone Depleting Substances
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PEL—Permissible Exposure Limit
PFC—Perfluorocarbons
PMS—Pantone® Matching System
ppm—Parts Per Million
PRA—Paperwork Reduction Act
RCRA—Resource Conservation and Recovery Act
RFA—Regulatory Flexibility Act
SDS—Safety Data Sheet
SIP—State Implementation Plan
TLV—Threshold Limit Value
TSCA—Toxic Substances Control Act
TWA—Time Weighted Average
UL—UL, formerly known as Underwriters Laboratories, Inc.
UMRA—Unfunded Mandates Reform Act
VOC—Volatile Organic Compound, Volatile Organic Compounds
WEEL—Workplace Environmental Exposure Limit
WMO—World Meteorological Organization

II. What is EPA proposing in this action?

A. Retail Food Refrigeration—Proposed Listing of HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as Acceptable, Subject to Use Conditions, for Use in New Stand-Alone Units, Remote Condensing Units, Supermarket Systems, and Refrigerated Food Processing and Dispensing Equipment and Proposed Listing of R–454A as Acceptable, Subject to Use Conditions, for Use in New Remote Condensing Units and Supermarkets Systems

EPA is proposing to list HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in all end-use categories under retail food refrigeration (*i.e.,* stand-alone units, remote condensing units, supermarket systems, and refrigerated food processing and dispensing equipment). EPA is also proposing to list R–454A as acceptable, subject to use conditions, for use in two end-use categories under retail food refrigeration (remote condensing units and supermarket systems).

EPA is proposing several use conditions for these end-use categories that are identical to those proposed for other end-uses (commercial ice machines, IPR, cold storage warehouses, and ice skating rinks with a remote compressor) discussed elsewhere in this proposal. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in Section II.H. In summary, the common use conditions EPA is proposing include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

For use of these substitutes in retail food refrigeration equipment, EPA is also proposing a use condition related to adherence to the American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 15–2022 ''Safety Standard for Refrigeration Systems'' (hereafter ''ASHRAE 15–2022''). Specifically, we are proposing that these refrigerants may only be used in commercial refrigeration equipment that meets all requirements listed in ASHRAE 15–2022. In cases where the final rule includes requirements that are different than those of ASHRAE 15–2022, EPA is proposing that the appliance would need to meet the requirements of this rule in place of the requirements in ASHRAE 15–2022. This additional use condition is discussed further in section II.A.4.

EPA is also proposing the following use condition for R–454A in supermarkets and remote condensing units: this substitute may only be used either in equipment with a refrigerant charge capacity less than 200 pounds or in the high-temperature side of a cascade system.

1. Background on Retail Food Refrigeration

Retail food refrigeration, an end-use within the SNAP program, encompasses the equipment used for storing and displaying (generally for sale) food and beverages at different temperatures necessary for the different products (*e.g.,* chilled and frozen food). The designs and refrigerating capacities of equipment vary widely to ensure the proper temperatures are achieved and maintained.

Retail food refrigeration is composed of four categories of equipment: stand-alone units; refrigerated food processing and dispensing equipment; remote condensing units; and supermarket systems. EPA treats each of these four end-use categories as a separate end-use for purposes of our comparisons of the overall impact on human health and the environment and of the availability of refrigerants.

Stand-alone units are refrigerators, freezers, and reach-in coolers (either

open or with doors) where all refrigeration components are integrated and, for the smallest types, the refrigeration circuit is entirely brazed or welded. These systems are charged with refrigerant at the factory and typically require only an electricity supply to begin operation. Such systems are used to chill and temporarily store perishable items for commercial sale, such as beverages and food.

Refrigerated food processing and dispensing equipment dispenses and often processes a variety of food and beverage products. For instance, some such equipment will process the product by combining ingredients, mixing, and preparing it at the proper temperature, while others function mainly as a holding tank to deliver the product at the desired temperature or to deliver chilled ingredients for processing, mixing, and preparation. Some may use a refrigerant in a heat pump, or utilize waste heat from the cooling system, to provide hot beverages. Some may also provide heating functions for melting or dislodging ice or for sanitation purposes.

Refrigerated food processing and dispensing equipment can be self-contained or can be connected via piping to a dedicated condensing unit located elsewhere. Equipment within this end-use category include but are not limited to refrigerated equipment used to process and dispense beverages and food such as: chilled and frozen beverages (carbonated and uncarbonated, alcoholic and nonalcoholic); frozen custards, gelato, ice cream, Italian ice, sorbets, and yogurts; milkshakes, ''slushies'' and smoothies, and whipped cream.

Remote condensing units exhibit refrigerating capacities ranging typically from 1kW to 20kW (0.3 to 5.7 refrigeration tons). They are composed of one (and sometimes two) compressor(s), one condenser, and one receiver assembled into a single unit, which is normally located external to the sales area. This equipment is connected to one or more nearby evaporator(s) used to cool food and beverages stored in display cases and/or walk-in storage rooms. Remote condensing units are commonly installed in convenience stores and specialty shops such as bakeries and butcher shops.

Typical supermarket systems are also known as multiplex or centralized systems. They operate with racks of compressors installed in a machinery room; different compressors turn on to match the refrigeration load necessary to maintain temperatures. Two main design classifications are used: direct and indirect systems. In the United States, direct systems are the most widespread. The plurality of supermarkets in the United States use centralized direct expansion (DX) systems to cool their display cases.[4] The refrigerant circulates from the machinery room to the sales area, where it evaporates in display-case heat exchangers, and then returns in vapor phase to the suction headers of the compressor racks. The supermarket walk-in cold rooms are often integrated into the system and cooled similarly, but an alternative option is to provide a dedicated condensing unit for a given storage room. Another type of supermarket design, often referred to as a distributed refrigeration system, uses an array of separate compressor racks located near the display cases rather than having a central compressor rack system. Each of these smaller racks handles a portion of the supermarket load, with five to ten such systems in a store.

Indirect supermarket system designs include secondary loop systems and cascade refrigeration. Indirect systems use a chiller or other refrigeration system to cool a secondary fluid that is often circulated throughout the store to the cases. Examples of secondary fluids include water, air, HCs, ammonia, and carbon dioxide (CO_2). Compact chiller versions of an indirect system rely on a lineup of ten to 20 units, each using small charge sizes. As the refrigeration load changes, more or fewer of the chillers are active. Compact chillers are used in a secondary loop system whereby the chillers cool a secondary fluid that is then circulated throughout the store to the display cases. Each compact chiller is an independent unit with its own refrigerant charge, reducing the potential for refrigerant to be released from leaks or for a catastrophic failure. Cascade systems use a compressor to raise the low-temperature, secondary fluid from low-temperature conditions up to an intermediate temperature while a separate, primary refrigerant system uses a different, higher temperature refrigerant to condense the secondary fluid. Each system within the cascade design contains its own refrigerant charge, allowing the use of different refrigerants in each system. This application has generally used a lower global warming potential (GWP) refrigerant, specifically CO_2 (R–744), in the low-temperature system, with a variety of refrigerants in the high temperature system.

[4] *www.epa.gov/greenchill/advanced-refrigeration.*

Refrigerant choice depends on the refrigerant charge, ambient temperatures and the temperature required, system performance, energy efficiency, and health, safety and environmental considerations, among other things. In addition to regulations pursuant to the SNAP program, other federal or local regulations may also affect refrigerant choice. For instance, regulations from OSHA may restrict or place requirements on the use of some refrigerants, such as ammonia (R–717). Building codes from local and state agencies may also incorporate limits on the types and amounts of particular refrigerants used. There are and will continue to be multiple factors that retailers must consider when selecting the refrigerant and operating system design, including: energy efficiency; system performance; potential impact on community safety; ambient temperatures; risk to personnel safety; cost; and minimization of direct and indirect environmental impacts.

2. What are the ASHRAE classifications for refrigerant flammability?

The ANSI/ASHRAE Standard 34–2022 ''Designation and Safety Classification of Refrigerants'' (hereafter ''ASHRAE 34–2022'') assigns a safety group classification for each refrigerant which consists of two to three alphanumeric characters (*e.g.,* A2L or B1). The initial capital letter indicates the toxicity, and the numeral denotes the flammability. ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than or equal to 400 parts per million (ppm) by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices.

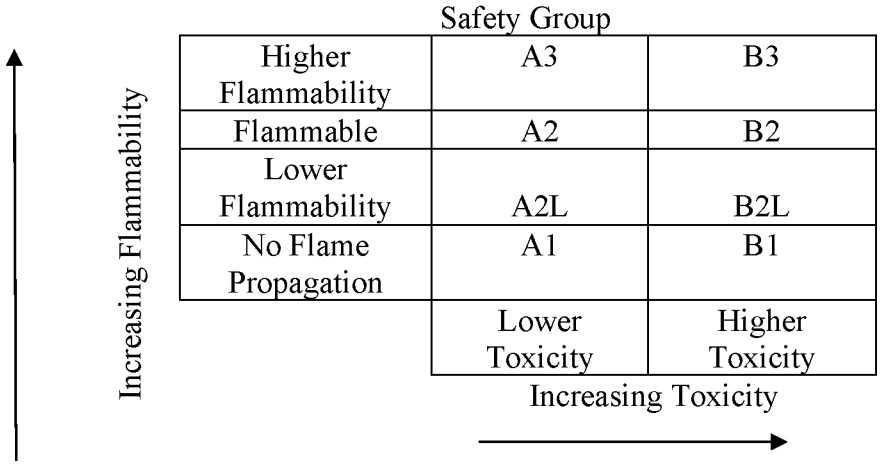
The refrigerants are also assigned a flammability classification of 1, 2, 2L, or 3. Tests for flammability are conducted in accordance with American Society for Testing and Materials (ASTM) E681 using a spark ignition source at 140 °F (60 °C) and 14.7 psia (101.3 kPa).[5] The flammability classification ''1'' is given to refrigerants that, when tested, show no flame propagation. The flammability classification ''2'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion

[5] ASHRAE, 2022b. ANSI/ASHRAE Standard 34–2022: Designation and Safety Classification of Refrigerants.

less than 19,000 kJ/kg (8,169 Btu/lb), and have a lower flammability limit (LFL) greater than 0.10 kg/m³. The flammability classification ''2L'' is given to refrigerants that, when tested, exhibit flame propagation, have a heat of combustion less than 19,000 kJ/kg (8,169 Btu/lb), have an LFL greater than 0.10 kg/m³, and have a maximum burning velocity of 10 cm/s or lower when tested in dry air at 73.4 °F (23.0 °C) and 14.7 psi (101.3 kPa). The flammability classification ''3'' is given to refrigerants that, when tested, exhibit flame propagation and that either have a heat of combustion of 19,000 kJ/kg (8,169 Btu/lb) or greater or have an LFL of 0.10 kg/m³ or lower.

For flammability classifications, refrigerant blends are designated based on the worst case of formulation for flammability and the worst case of fractionation for flammability determined for the blend.

Figure 1. Refrigerant Safety Group Classification



Using these safety group classifications, ASHRAE 34–2022 categorizes HFO–1234yf, HFO–1234ze(E), HFC–32 and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A, which are discussed in this section of this proposed rule, as being in the A2L Safety Group, while R–290 is in the A3 Safety Group.

3. What are HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A and how do they compare to other refrigerants in the same end-use?

HFO–1234yf and HFO–1234ze(E) are lower flammability refrigerants, and R–454A, R–454C, R–455A, R–457A, and R–516A are lower flammability refrigerant blends, all with an ASHRAE safety classification of A2L.[6] The respective Chemical Abstracts Service Registry Identification Numbers (CAS Reg. Nos.) of HFO–1234yf, HFO–1234ze(E), and the components of the refrigerant blends are listed here.

HFO–1234yf, also known by the trade names ''Solstice® yf'' and ''Opteon ™ YF,'' is also known as 2,3,3,3-tetrafluoroprop-1-ene (CAS Reg. No. 754–12–1). HFO–1234ze(E), also known by the trade names ''Solstice® ze and Solstice® 1234ze'', is also known as *trans*-1,3,3,3,tetrafluoroprop-1-ene (CAS Reg. No. 29118–24–9). R–516A, also known by the trade name ''Forane® 516A,'' is a blend consisting of 77.5 percent HFO–1234yf, 14 percent HFC–152a, and 8.5 percent HFC–134a. R–457A, also known by the trade name ''Forane® 457A,'' is a blend consisting of 18 percent HFC–32, 12 percent HFC–152a, and 70 percent HFO–1234yf. R–455A, also known by the trade name ''Solstice® L40X,'' is a blend consisting of 21.5 percent HFC–32, 75.5 percent HFO–1234yf, and three percent R–744 (CO_2). R–454A, also known by the trade name ''Opteon™ XL 40,'' is a blend consisting of 35 percent HFC–32 and 65 percent HFO–1234yf. R–454C, also known by the trade name ''Opteon™ XL 20,'' is a blend consisting of 21.5 percent HFC–32 and 78.5 percent HFO–1234yf.

Redacted submissions and supporting documentation for HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed a risk screening assessment to examine the health and environmental risks of each of these substitutes. These risk screens are available in the docket for this proposed rule.[7] [8] [9] [10] [11] [12] [13]

Environmental information: HFO–1234yf, HFO–1234ze(E) and R–454A, R–454C, R–455A, R–457A, and R–516A have ozone depletion potentials (ODPs) of zero.

[6] EPA previously listed HFO–1234yf as acceptable, subject to use conditions, in motor vehicle AC in light-duty vehicles (74 FR 53445, October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778, December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276, May 4, 2022). EPA previously listed R–454A, R–454C, and R–457A as acceptable, subject to use conditions, as a substitute in residential and light commercial AC and heat pumps (HPs) (86 FR 24444, May 6, 2021).

[7] ICF, 2023a. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: HFO–1234yf.

[8] ICF, 2023b. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: HFO–1234ze(E) (Solstice® ze, Solstice® 1234ze)

[9] ICF, 2023c. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–454A (Opteon® XL40).

[10] ICF, 2023d. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–454C (Opteon™ XL20).

[11] ICF, 2023e. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–455A (Solstice® L40X).

[12] ICF, 2023f. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–457A (Forane® 457A).

[13] ICF, 2023g. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–516A (Forane® 516A).

HFO–1234yf has a GWP of less than four.[14] [15] [16] HFO–1234ze(E) has a GWP of less than six.[17] [18] The refrigerant blends are made up of the components HFC–32, HFC–125, HFC–152a, CO_2, and HFO–1234yf, which have GWPs of 675, 3,500, 124, one, and less than four, respectively.[19] If these values are weighted by mass percentage, then R–454A, R–454C, R–455A, R–457A, and R–516A have GWPs of about 240, 150, 146, 140, and 142, respectively.

HFO–1234yf, HFO–1234ze(E), and the other components of the refrigerant blends, CO_2, HFC–32, HFC–125, and HFC–152a, are excluded from EPA's regulatory definition of volatile organic compounds (VOC) (see 40 CFR 51.100(s)) addressing the development of State Implementation Plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS). That definition provides that ''any compound of carbon'' which ''participates in atmospheric photochemical reactions'' is considered a VOC unless expressly excluded in that provision based on a determination of ''negligible photochemical reactivity.''

Under section 608(c)(2) of the CAA and EPA's regulations at 40 CFR 82.154(a)(1), it is unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any substitute substance for a class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. EPA has established certain limited exemptions to this venting prohibition, as listed in 40 CFR 82.154(a)(1), but none of those exemptions apply to HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, or R–516A.

Flammability information: HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A have lower flammability, with an ASHRAE flammability classification of 2L.

Toxicity and exposure data: HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A have an ASHRAE toxicity classification of A (lower toxicity). Potential health effects of exposure to these substitutes include drowsiness or dizziness. The substitutes may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, the substitutes may cause irregular heartbeat. The substitutes could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

OSHA has established a Permissible Exposure Limit (PEL) for CO_2 of 5,000 ppm as an 8-hr TWA. The American Industrial Hygiene Association (AIHA) has established Workplace Environmental Exposure Limits (WEELs) of 1,000 ppm as an 8-hr TWA for HFC–32, HFC–125, and HFC–152a; 500 ppm as an 8-hr TWA for HFO–1234yf; and 800 ppm as an 8-hr TWA for HFO–1234ze(E). The manufacturers of R–454A, R–454C, R–455A, R–457A, and R–516A recommend acceptable exposure limits (AELs) for the workplace, respectively, of 690, 615, 650, 650, and 590 ppm on an 8-hr TWA for these blends.[20] EPA anticipates that users will be able to meet the OSHA PEL, AIHA WEELs, and manufacturers' AELs and address potential health risks by following requirements and recommendations in the manufacturers' safety data sheets (SDSs), the use conditions proposed (including adherence to Underwriters Laboratories (UL) 60335–2–89 and ASHRAE 15–2022), and other safety precautions common to the refrigeration and AC industry.

Comparison to other substitutes in these end-uses: HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in these end-uses, such as CO_2, with an ODP of zero.

For new refrigerated food processing and dispensing equipment, R–454A, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 240, higher than to that of CO_2, an acceptable substitute in this end-use category, with a GWP of 1, while HFO–1234yf and HFO–1234ze(E) have comparable GWPs to CO_2 of less than four and less than six, respectively. The GWPs of HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A are lower than those of other acceptable substitutes for new refrigerated food processing and dispensing equipment, such as R–450A, R–513A, and HFC–134a, with GWPs of approximately 600, 630, and 1,430, respectively.

For new remote condensing units and supermarket systems, R–454A, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 240, higher than that of ammonia and CO_2, acceptable substitutes in these end-use categories, with GWPs of zero and one, respectively, while HFO–1234yf and HFO–1234ze(E) have comparable GWPs to CO_2 of less than four and less than six, respectively. The GWPs of HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A are lower than those of some of the acceptable substitutes for new remote condensing units and new supermarket systems, such as R–450A, R–513A, HFC–134a, R–407A, and R–404A, with GWPs of approximately 600, 630, 1,430, 2,110, and 2,630, respectively.

For new stand-alone units, R–454A, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 240, higher than some of the acceptable substitutes in this end-use category such as CO_2, R–290, and R–441A with GWPs of one, three, and less than five, while HFO–1234yf and HFO–1234ze(E) have comparable GWPs to GWPs of CO_2, R–290, and R–441A of less than four and less than six, respectively. The GWPs of HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A are lower than some of the acceptable substitutes for new stand-alone units, such as R–450A and R–513A, with GWPs of 601 and 630, respectively.

Information regarding the toxicity of other available alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/retail-*

[14] World Meteorological Organization (2018). Burkholder *et al.* Appendix A, Table A–1 in *Scientific Assessment of Ozone Depletion: 2018, Global Ozone Research and Monitoring Project,* Report No. 58, World Meteorological Organization, Geneva, Switzerland, *https://ozone.unep.org/science/assessment/sap.* (WMO, 2018)

[15] Nielsen et al., 2007. Nielsen, O.J., Javadi, M.S., Sulbaek Andersen, M.P., Hurley, M.D., Wallington, T.J., Singh, R. 2007. Atmospheric chemistry of CF3CF=CH2: Kinetics and mechanisms of gas-phase reactions with Cl atoms, OH radicals, and O3. Chemical Physics Letters 439, 18–22. Available online at: *www.cogci.dk/network/OJN_174_CF3CF=CH2.pdf.*

[16] Hodnebrog Ø. et al., 2013. Hodnebrog Ø., Etminan, M., Fuglestvedt, J.S., Marston, G., Myhre, G., Nielsen, C.J., Shine, K.P., Wallington, T.J.: Global Warming Potentials and Radiative Efficiencies of Halocarbons and Related Compounds: A Comprehensive Review, *Reviews of Geophysics, 51, 300–378, doi:10.1002/rog.20013,* 2013.

[17] Javadi et al., 2008. Atmospheric chemistry of trans-CF_3CH=CHF: products and mechanisms of hydroxyl radical and chlorine atom initiated oxidation,' M.S. Javadi, R. Søndergaard, O.J. Nielsen, M.D. Hurley, and T.J. Wellington, *Atmospheric Chemistry and Physics Discussions 8, 1069–1088,* 2008.

[18] Ibid.

[19] Unless otherwise specified, GWP values are 100-year values from Intergovernmental Panel on Climate Change (IPCC) (2007) Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.). Cambridge University Press. Cambridge, United Kingdom 996 pp.

[20] The 8-hr TWA AEL recommendations of these refrigerant blends are based upon a mass-weighting of the PEL and WEELs of their components.

food-refrigeration). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit, of HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A in these end-uses are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A in retail food refrigeration equipment are comparable to or lower than toxicity risks of other available substitutes in the same end-uses. Toxicity risks of the proposed refrigerants can be minimized by use consistent with UL 60335–2–89—which would be required by our proposed use conditions—and other industry standards, such as ASHRAE 15–2022—which applies under the use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry.

The flammability risks with HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A in these end-uses, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced above. In conclusion, while these refrigerants may pose greater flammability risk than other available substitutes in the same end-uses, this risk can be minimized by use consistent with ASHRAE 15–2022, which would be required for equipment with certain charge sizes by our proposed use conditions, and other industry standards such as UL 60335–2–89, which would also be required by our proposed use conditions, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions that maintain the low potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in this end-use category.

In addition, the proposed substitutes have lower GWPs than most other available alternatives for the same uses. The proposed refrigerants provide additional lower-GWP options for situations where other refrigerants with lower GWPs are not viable, such as for use of HCs in systems with remote compressors or equipment requiring larger charge sizes, or where equipment using CO_2 may not be able to meet energy conservation standards from the U.S. Department of Energy (DOE). Given the wide range of applications for retail food refrigeration, not all refrigerants listed as acceptable under SNAP will be suitable for the range of equipment in the retail food refrigeration end-use or in the four end-use categories within retail food refrigeration. To provide additional options to ensure the availability of substitutes for the full range of retail food refrigeration equipment with lower GWP and, therefore, lower overall risk to human health and the environment, EPA is proposing the listings for HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in all types of retail food refrigeration equipment. In addition, to account for the additional challenges for finding lower GWP refrigerants with higher capacity for remote condensing units and supermarket systems with moderate charge sizes and for cascade systems, EPA is proposing to list R–454A as acceptable, subject to use conditions, for use in remote condensing units and supermarket systems with a charge size capacity less than 200 pounds or for use in the high-temperature side of a cascade system.

4. Why is EPA proposing these specific use conditions?

This proposal applies to end-uses covered by UL 60335–2–89. This standard applies to commercial and industrial refrigeration equipment, including the SNAP end-uses of retail food refrigeration, commercial ice machines, IPR, cold storage warehouses, and ice skating rinks. In addition, ASHRAE 15–2022 applies to these refrigeration systems.

The standard UL 60335–2–89 discussed in section II.H indicates that refrigerant charges greater than a specific amount (called ''m_3'' in the standard and based on the refrigerant's LFL) are beyond its scope and that national standards might apply, such as ASHRAE 15–2022. Hence, EPA is proposing to require adherence to both standards as use conditions for remote condensing units and supermarket systems, broadening the coverage under this proposed rule.

EPA is proposing to incorporate by reference ASHRAE 15–2022, including all addenda published by the date of this proposal, in use conditions that apply to use of the proposed A2L refrigerants in new remote condensing units and supermarket systems. Where the requirements specified in this proposed rule (if finalized) and ASHRAE 15–2022 differ, the requirements of this rule would apply.

A partial summary of ASHRAE 15–2022 is provided here for information only. This is not meant to be a full explanation of the standard or how it is applied. ASHRAE 15–2022 specifies requirements for refrigeration systems, based on the safety group classification of the refrigerant used, the type of occupancy in the location for which the system is used, and whether refrigerant-containing parts of the system enter the space or ductwork and so leakage in the space is deemed ''probable.'' ''High-probability'' installations are those such that leaks or failures will result in refrigerant entering occupied space. As previously explained, HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A are all classified as A2L refrigerants. Occupancies are divided into six classifications: institutional, public assembly, residential, commercial, large mercantile, and industrial. Examples of these include jails, theaters, apartment buildings, office buildings, shopping malls, and chemical plants, respectively.

Sections 7.2 and 7.3 of ASHRAE 15–2022 determine the maximum amount of refrigerant allowed in the system, while section 7.4 provides an option to locate equipment outdoors or in a machinery room constructed and maintained under conditions specified in the standard. Section 7.7 of ASHRAE 15–2022 addresses the A2L refrigerants in this proposal when used in ''high-probability'' systems that are not for human comfort, including requirements for nameplates, labels, refrigerant detectors (under certain conditions), airflow initiation and other actions (if a rise in refrigerant concentration is detected), and other restrictions.

EPA recognizes that ASHRAE 15–2022 is undergoing continuous maintenance with publication of periodic addenda and is typically updated and republished every three years. While this proposed rule incorporates all addenda published by the date of this proposal, there may be additional changes to ASHRAE 15–2022 by the time EPA issues a final rule based upon this proposal. However, given EPA would not have reviewed and proposed use conditions based on those changes, EPA is not proposing to include addenda or other changes made to ASHRAE 15–2022 after the date of the proposed rule.

EPA is proposing to list R–454A as acceptable, subject to use conditions, in supermarkets and remote condensing units with a use condition that this substitute may only be used either in equipment with a refrigerant charge capacity less than 200 pounds or in the high-temperature side of a cascade system. The Agency is proposing this use condition to allow use of R–454A less broadly than for the other

refrigerants proposed for use in remote condensing units and supermarket systems because its GWP is higher than those of the other proposed listings for these end-use categories (about 240, compared to less than four to 150). EPA's understanding is that there are two particular situations where use of refrigerants is likely to be more constrained, and thus, additional refrigerant options may be helpful. The first of those situations is in what the industry standard ASHRAE 15–2022 identifies as a refrigerating system having a ''high probability'' that leaked refrigerant from a failed connection, seal, or component could enter an occupied area. An example of such a constraint is that ASHRAE 15–2022 and UL 60335–2–89 effectively set charge limits for A2L refrigerants to less than 200 pounds for applications inside a supermarket or convenience store that are open to the general public. In contrast, larger charge sizes could be used in ''low-probability'' locations where the general public is unlikely to come in contact with the refrigerant, such as systems used outdoors or in a machinery room with access restricted to store employees. Where the general public is unlikely to come into contact with any leaked refrigerant, such as where charge sizes of 200 pounds or more of A2L refrigerant would be allowed under the use conditions incorporating UL 60335–2–89 and ASHRAE 15–2022, there would be fewer space constraints and greater flexibility in equipment design, so refrigeration system designers can accommodate a narrower set of substitutes. Conversely, where the general public is more likely to come into contact with any leaked refrigerant in an interior space, refrigerant charge capacities of a system would be less than 200 pounds; there would be more space constraints, less flexibility in equipment design, and potentially stricter code requirements, leading to a need for more refrigerant options. Allowing the additional option of R–424A for supermarket systems and remote condensing units with smaller refrigerant charges would enable the use of a wider set of available substitutes to manage safety (in particular, flammability and toxicity), as well as allowing more options to achieve adequate performance where there may be more constraints. Therefore, EPA is proposing to list R–454A as acceptable, subject to use conditions, only for supermarket systems and remote condensing units with a refrigerant charge capacity less than 200 pounds.

EPA is also proposing to list R–454A as acceptable, subject to use conditions, for use in the high temperature side of cascade systems used for supermarket systems and remote condensing units. As discussed above in section II.A.1, ''Background on retail food refrigeration,'' each system of a cascade system uses a different refrigerant that is most suitable for the given temperature range. High temperature systems, or the ''high temperature side,'' have typically used HFCs as a refrigerant; however, it is technologically achievable and has become more common to use ammonia in the high temperature side. For lower temperature systems, or the ''low temperature side'' of the cascade system, low boiling refrigerants such as R–744 can be used. Considerations for the choice of refrigerant on the high or low temperature side of cascade systems are influenced by many factors including, but not limited to, a refrigerant's toxicity and flammability, its temperature glide, and its suitability for lower temperature applications. EPA understands that use of flammable or toxic refrigerants, such as ammonia, on the high temperature side of a cascade may be limited in certain circumstances (*e.g.,* based on building codes and/or standards). The Agency considered whether to propose to list R–454A as acceptable, subject to narrowed use limits. For listings with narrowed use limits, the refrigerant user (*e.g.,* equipment manufacturer or end user) intending to adopt a substitute with narrowed use limits ''must ascertain that other alternatives are not technically feasible.'' 40 CFR 82.180(b)(3). In the case of the high side of a cascade system, EPA is currently aware of a limited number of available options with a GWP below R–454A; therefore, EPA does not consider it necessary to require users to first consider those lower GWP refrigerants before selecting R–454A. The Agency notes that there are multiple substitutes available for the low temperature side of the cascade system with GWPs lower than that of R–454A, but there are few options for the high temperature side of the cascade system. Therefore, instead of proposing to list R–454A as acceptable, subject to narrowed use limits and subject to use conditions, EPA is proposing to list R–454A as acceptable, subject to use conditions, when it is used in the high temperature side of cascade systems; this would expand the refrigerant options that can comply with local building codes and industry safety standards while meeting the more challenging application of the high temperature side of a cascade system.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. The additional information applies to multiple end-uses covered in this proposal. Because of this similarity, EPA discusses the proposed additional information in these proposed listings that would apply to all five end-uses in section II.H.2 While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the **FURTHER INFORMATION** column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed decision to list HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, in new supermarket systems and new remote condensing units as discussed in this section II.A. We also request comment on the use conditions specifically for R–454A, restricting its use to supermarket systems and remote condensing units used either with a refrigerant charge capacity of less than 200 pounds or in the high temperature side of a cascade system, and whether EPA should use different criteria in the final use conditions. We request comment on our proposal to find HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, for use in new refrigerated food processing and dispensing equipment (self-contained equipment) and new stand-alone units. EPA also seeks specific comments on the use conditions including the proposed requirements to comply with UL 60335–2–89, and for charge sizes larger than ''m_3,'' also to comply with ASHRAE 15–2022 including addenda as of the date of this proposal. With respect to these standards, EPA is requesting comment on the risk mitigation offered by compliance with the current version of the standards proposed as use conditions, *i.e.,* UL 60335–2–89 and ASHRAE 15–2022, the nature of updates proposed for these standards, and the expected timeline for those updates. EPA is requesting comment on the applicability of the 2nd edition of UL 60335–2–89 to retail food refrigeration equipment, including which types of equipment and under which

applications the standard applies, as well as on the applicability of ASHRAE 15–2022 with the addenda published as of the date of this proposal. Finally, EPA requests comment on whether there are any specific cases of conflicts between UL 60335–2–89 and ASHRAE 15–2022 that require a clarification as to which standard should apply.

B. Retail Food Refrigeration—Proposed Listing of R–290 as Acceptable, Subject to Use Conditions, for Use in New Refrigerated Food Processing and Dispensing Equipment and Proposed Revision of Use Conditions Provided in the Previous Listing of R–290 as Acceptable, Subject to Use Conditions, for Use in Stand-Alone Units

This proposed listing for R–290 would be a new listing for one end-use category under retail food refrigeration, *i.e., new refrigerated food processing and dispensing equipment.* Further, EPA is also proposing to revise use conditions provided in the previous listing of R–290 as acceptable, subject to use conditions, for use in new stand-alone units. More specifically, EPA previously listed R–290 as acceptable, subject to use conditions, in new stand-alone units in SNAP Rule 17 (76 FR 78832, December 20, 2011). In this document, we are proposing to update those use conditions to be consistent with the most recent U.S. national standard for retail food refrigeration equipment, the 2nd edition of UL 60335–2–89. Similar use conditions apply to other refrigerants with lower flammability as proposed in this SNAP action in section II.A above. The proposed use conditions would be allowed for such equipment manufactured on or after the effective date of any final rule and would not apply to nor affect equipment manufactured before the effective date of any final action and manufactured in compliance with the SNAP requirements applicable at the time of manufacture.

This proposed revision to the use conditions would incorporate by reference a different industry standard, changing the reference from Supplement SB to the 10th edition of UL 471, ''Commercial Refrigerators and Freezers,'' which is required in the current SNAP listing for R–290, to the 2nd edition of UL 60335–2–89. EPA is proposing a transition period during which stand-alone units manufactured with R–290 may follow either the earlier standard UL 471 or UL 60335–2–89. After the transition period ends, stand-alone units manufactured with R–290 would need to follow UL 60335–2–89 for purposes of the SNAP program.

Several use conditions proposed for these end-use categories are similar to those proposed for other end-uses. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

If the regulatory text is finalized as proposed, EPA would revise the existing listing for R–290 in new stand-alone units in appendix R to 40 CFR part 82, subpart G, and would add the new listing for R–290 in refrigerated food processing and dispensing units in appendix Y to 40 CFR part 82, subpart G. The proposed regulatory text contains revised listing decisions for new stand-alone units in appendix R, as well as certain other previous listings that EPA is republishing for purposes of formatting for the **Federal Register***;* EPA is not proposing substantive changes to, and is not taking comment on, those earlier decisions (*e.g.,* listings for R–290, R–441A, and R–600a in household refrigerators and freezers and in vending machines).

1. Background on Retail Food Refrigeration

See section II.A.1 for background on the retail food refrigeration end-use and particularly for the stand-alone units and refrigerated food processing and dispensing equipment end-use categories.

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE 34–2022 categorizes R–290 as being in the A3 Safety Group. See section II.A.2 for further discussion on ASHRAE classifications.

3. What is R–290 and how does it compare to other refrigerants in the refrigerated food processing and dispensing equipment end-use category?

R–290 is also known as propane and has the formula C_3H_8 (CAS Reg. No. 74–98–6). Redacted submissions and supporting documentation for R–290 in retail food refrigeration are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed a risk screening assessment to examine the health and environmental risks of this substitute. This risk screen is available in the docket for this proposed rule.[21]

Environmental information: R–290 has an ODP of zero. R–290 has a GWP of three. R–290 is regulated as a VOC under CAA regulations (40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. EPA previously exempted R–290 in retail food refrigerators and freezers (stand-alone units only) from the prohibition under CAA section 608(c)(2) on knowingly venting, releasing, or disposing of substitute refrigerants, finding that such venting, release, or disposal does not pose a threat to the environment (79 FR 29682, May 23, 2014).

EPA evaluated potential impacts of R–290 and other HC refrigerants on local air quality. R–290 (propane) is considered a VOC and is not excluded from EPA's regulatory definition of VOC (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the NAAQS. As described below, EPA estimates that potential emissions of saturated HC refrigerants, such as R–290 and R–600a (isobutane), do not have a significant impact on local air quality.[22]

EPA has conducted multiple analyses of various scenarios to consider the potential impacts on local air quality if HC refrigerants were used widely.[23] The analyses considered both worst-case and more realistic scenarios. In an analysis supporting the listings of R–290, R–600a, and the HC blend R–441A in multiple refrigeration and air conditioning end-uses in SNAP Rule 19 (80 FR 19454, April 10, 2015), the worst-case scenario assumed that the most reactive HC listed as acceptable as of the time of those listings (R–600a) was used in all refrigeration and AC uses and that all refrigerant used was emitted to the atmosphere rather than most being recovered. In that extreme scenario, the model predicted that the maximum increase in any single 8-hour average ground-level ozone concentration would be 0.72 parts per billion (ppb) in Los Angeles, which is the area with the highest level of ozone pollution in the United States. At the time of the analysis in 2014, 0.72 ppb was less than 1% of the NAAQS, and

[21] ICF, 2023h. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: Propane (R–290).

[22] ICF, 2014a. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. February, 2014.

[23] Ibid.

we stated at the time that the use of R–600a consistent with the use conditions required in EPA's regulations would not result in significantly greater risk to the environment than other alternatives. Using the current ozone NAAQS value of 70 ppb, use of the most reactive saturated HC, R–600a, with a 100% market penetration would just exceed a level that might raise concerns for EPA. However, considering that R–290 is less reactive than R–600a[24] and that R–290 would have a market penetration at least as high as that of R–600a,[25] we still consider use of saturated HC refrigerants not to result in significantly greater risk.

In a less conservative analysis of potential impacts on ambient ozone levels, EPA looked at a set of end-uses that would be more likely to use HC refrigerants between now and 2030, including end-uses where they previously have been listed as acceptable and where they are proposed to be acceptable under this rule. For example, we assumed use of R–290 in refrigerated food processing and dispensing equipment[25] and in end-uses where it is already listed as acceptable, including retail food refrigeration—stand-alone units, vending machines, water coolers, self-contained commercial ice machines, room air conditioners, and household refrigerators and freezers. We also assumed the use of other HC refrigerants such as R–600a and R–441A in end-uses where they are listed as acceptable, such as in retail food refrigeration—stand-alone units, vending machines, and household refrigerators and freezers. For further information on the specific assumptions, see the docket for this rulemaking.[26] Based on this still conservative but more probable assessment of refrigerant use, we found that even if all the refrigerant in appliances in end-uses addressed in this proposed rule and in appliances in end-uses for which other HCs are listed as acceptable were to be emitted, there would be a worst-case impact of a 0.15 ppb increase in ozone for a single 8-hour average concentration in the Los Angeles area, which is the area with the highest level of ozone pollution in the United States. In the other cities examined in the analysis, Houston and Atlanta, impacts were smaller (no more than 0.03 and 0.01 ppb for a single 8-hour average concentration, respectively).[27] For areas in the analysis that were not violating the 2008 ozone NAAQS, the impacts did not cause an exceedance of the 2008 ozone NAAQS.

EPA also has performed more recent air quality analyses, considering additional end-uses and refrigerants that have been listed acceptable more recently (*e.g.,* R–1150 in very low temperature refrigeration) and using updated models.[28] EPA found that the revised air quality models showed slightly greater impacts compared to our 2014 analyses in all scenarios, but not enough to change our earlier conclusions in 2015 and 2016 that use of saturated HCs as refrigerants, including release of R–290, R–600a, and R–441A during repairing, maintaining, servicing, or disposing of appliances, would not result in a significant increase in ground-level ozone. Further, there would be no change in the prior conclusion that use of the saturated HCs R–290, R–600a, and R–441A, consistent with the SNAP listings, including their use conditions and the proposed use conditions in this rule, would not result in significantly greater risk to people's health or the environment than other alternatives available for the same end-use, refrigerated food processing and dispensing equipment.

Based on the results of these analyses, EPA is proposing to list R–290 as acceptable, subject to use conditions, in refrigerated food processing and dispensing equipment. Because of the relatively minimal air quality impacts of R–290 if it is released to the atmosphere from the end-uses where it is listed as acceptable subject to use conditions and from the proposed refrigerated processing and dispensing equipment end-use category, even in a worst-case scenario, we conclude that R–290 does not have a significantly greater overall impact on human health and the environment based on its effects on local air quality than other refrigerants listed as acceptable in the same end-uses.

Flammability information: R–290 is a higher flammability refrigerant, with an ASHRAE safety classification of A3. However, the proposed substitute is not expected to present a flammability concern provided the proposed use conditions are followed.

Toxicity and exposure data: R–290 has an ASHRAE toxicity classification of A (lower toxicity). Potential health effects of exposure to this substitute include drowsiness or dizziness. The substitute may also irritate the skin or eyes or cause frostbite. This substitute could cause asphyxiation if air is displaced by vapors in a confined space. These potential health effects are common to many refrigerants.

OSHA has established a PEL of 1,000 ppm as an 8-hr TWA for propane (R–290). EPA anticipates that users will be able to meet OSHA's PEL and address potential health risks by following requirements and recommendations in the manufacturers' SDSs, the use conditions proposed (including compliance with UL 60335–2–89), adherence to ASHRAE 15–2022, and other safety precautions common to the refrigeration and AC industry.

Comparison to other substitutes in the refrigerated food processing and dispensing end-use category: R–290 has an ODP of zero, comparable to or lower than some of the acceptable substitutes in new refrigerated food processing and dispensing equipment, such as CO_2, R–450A, and R–513A, with ODPs of zero.

R–290's GWP of 3 is comparable to that of other acceptable substitutes for new refrigerated food processing and dispensing equipment, including CO_2, with a GWP of 1. The GWP of R–290 is lower than some of the acceptable substitutes for new refrigerated food processing and dispensing equipment, such as R–450A, R–513A, R–134a, and R–407H, with GWPs of approximately 600, 630, 1,430, and 1,500, respectively.

EPA's risk screen for R–290 in retail food refrigeration,[29] including refrigerated food processing and dispensing equipment, found that R–290 can be used without exceeding its PEL of 1,000 ppm (8-hr TWA); thus, the toxicity risks of R–290 are comparable to those of other acceptable substitutes in the refrigerated food processing and dispensing equipment end-use category, which also are used without exceeding their workplace exposure limits.

Although we noted that the flammability of R–290 may be greater than that of other available, substitutes with an ASHRAE 1, 2, or 2L flammability classification in the same end-use, we found its flammability risk to be not significant even under worst-case assumptions in this end-use category when following the proposed

[24] R–600a has a maximum incremental reactivity (MIR) of 1.34 g O_3/g R–600a, while R–290 has a MIR of 0.56 g O_3/g R–290. ICF, 2023h, Op. cit.; Carter, 2010. ''Development of the SAPRC–07 Chemical Mechanism and Updated Ozone Reactivity Scales,'' Report to the California Air Resources Board by William P.L. Carter. Revised January 27, 2010.

[25] In the analysis, refrigerated food processing and dispensing equipment was evaluated under the category of ''small retail food'' refrigeration equipment, along with stand-alone units, vending machines, and water coolers.

[26] ICF, 2014a. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. February 2014.

[27] Ibid.

[28] ICF, 2020. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May 2020. Updated models included VM IO file_v5.1_10.01.19 and CMAQ 5.2.1 with carbon bond 06 (CB06) mechanism, as cited in ICF, 2020.

[29] ICF, 2023h. Op. cit.

use conditions.[30] We note that flammability risk can be minimized by use consistent with industry standards such as UL 60335–2–89—which would be required by our proposed use conditions—and ASHRAE 15–2022, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and air conditioning industry. The proposed use conditions for refrigerated food processing and dispensing equipment would maintain low potential risk associated with the flammability of this alternative so that it will not pose significantly greater risk than other acceptable substitutes in this end-use category.

The proposed substitute, R–290, has a GWP of 3, lower than that of most other available alternatives for the same end-use category with similarly low toxicity. R–290 provides an additional lower-GWP option for situations where other refrigerants with lower GWPs are not viable, such as where equipment using CO_2 may not be able to meet DOE's energy conservation standards. To provide additional, lower-GWP options with lower overall risk to human health and the environment, EPA is proposing the listing of R–290 as acceptable, subject to use conditions, for use in refrigerated food processing and dispensing equipment.

4. Why is EPA proposing these specific use conditions for refrigerated food processing and dispensing equipment?

For refrigerated food processing and dispensing equipment, EPA proposes to require use of UL 60335–2–89, for purposes of the SNAP program, as of the effective date of the final rule based on this proposal. Several of the use conditions proposed for refrigerated food processing and dispensing equipment are common to those proposed for R–290 in the commercial ice machine end-use in section II.D, and others are common to all five end-uses in this proposed rule. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

5. How would the proposed listing for R–290 in refrigerated food processing and dispensing equipment relate to regulations implementing the venting prohibition under CAA section 608?

In section II.I of this document, EPA is proposing to exempt R–290 used as a refrigerant in refrigerated food processing and dispensing equipment from the prohibition under CAA section 608(c)(2) on knowingly venting or otherwise knowingly releasing or disposing of any substitute refrigerant in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration.

6. What use conditions currently apply to this refrigerant in the stand-alone units end-use category?

EPA previously listed R–290 acceptable, subject to use conditions, in new stand-alone units in SNAP Rule 17 (76 FR 78832, December 20, 2011). Those requirements are codified in appendix R to 40 CFR part 82, subpart G. EPA provided information on the potential environmental and health risks of R–290 and the various substitutes available at that time for use in this end-use category. Additionally, EPA's previous risk screen for this refrigerant in this end-use category, based on the use conditions in that rule, is available in the docket for that previous rulemaking (EPA–HQ–OAR–2009–0286).

R–290 has an ASHRAE classification of A3, indicating that it has low toxicity and higher flammability. In the presence of an ignition source (*e.g.,* static electricity, a spark resulting from a closing door, or a cigarette), an explosion or a fire could occur if the concentration of R–290 were to exceed the LFL of 21,000 ppm (2.1 percent) by volume.

The use conditions established in the 2011 listing for R–290 in new stand-alone units addressed safe use of this flammable refrigerant based on information available at that time and included the following: incorporation by reference of Supplement SB to the 10th edition (November 24, 2010) of the standard UL 471 ''Commercial Refrigerators and Freezers''; refrigerant charge size limits based on cooling capacity and type of equipment; and requirements for markings and warning labels on equipment using the refrigerant to inform consumers, technicians, and first responders of potential flammability hazards. EPA explained in that rulemaking that without appropriate use conditions, the flammability risk posed by this refrigerant could be higher than non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and because the refrigerant could be used in existing equipment that has not been designed specifically to minimize flammability risks. Our assessment and listing decisions in SNAP Rule 17 (76 FR 78832, December 20, 2011) found that with the use conditions, the overall risk of R–290, including the risk due to flammability, was not significantly greater in the stand-alone units end-use than other substitutes that are currently or potentially available for that same end-use.

7. What updates to existing use conditions for stand-alone units is EPA proposing?

EPA is proposing to update the use conditions that apply to R–290 in new stand-alone units manufactured on or after the effective date of any final rule based on this proposal. Several of the updated use conditions proposed for use of R–290 in stand-alone units are common to those proposed for the commercial ice machine end-use in section II.D, and others are common to all five end-uses in this proposed rule. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. For R–290 in stand-alone units, these are the only revised use conditions EPA is proposing. In summary, with the updates proposed to the use conditions for stand-alone units, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

If finalized as proposed, the use conditions in this action would apply to new stand-alone units on or after the effective date of any final rule. Any final rule would not apply to nor affect equipment manufactured before the effective date of this action and manufactured in compliance with the SNAP use conditions applicable at the time of manufacture as stipulated in SNAP Rule 17 and appendix R to 40 CFR part 82, subpart G. EPA views equipment to be manufactured at the date upon which the appliance's

[30] ICF, 2023h. Op. cit.

refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes. For stand-alone units (and most refrigerated food processing and dispensing equipment), this occurs at the factory. If this rule is finalized as proposed, new stand-alone units manufactured between February 21, 2012, and the effective date of the final rule would be required to meet the use conditions in SNAP Rule 17 (which took effect February 21, 2012) and as listed in appendix R to 40 CFR part 82, subpart G, including the use condition incorporating by reference Supplement SB to the 10th edition of UL 471. Such products would be permitted to be warehoused and sold through normal channels, even if they are sold or installed after the effective date of any final rule based on this proposed rule. Stand-alone units using R–290 manufactured on or after the effective date of any final rule based on this proposal would be required to meet the use conditions so finalized and listed in the revisions to appendix R. Those use conditions would allow manufacturers of new stand-alone units using R–290 to follow either UL 471 or UL 60335–2–89 from the effective date of any final rule based on this proposal and would last through September 29, 2024. On and after September 30, 2024, the use condition for use of R–290 in equipment that meets UL 60335–2–89 only would apply under SNAP.

EPA is proposing use conditions allowing new stand-alone units to be manufactured consistent with Supplement SB of UL 471, up to and including September 29, 2024, which is the date when UL is sunsetting UL 471. Therefore, during the time between the effective date of any final rule based on this proposal and September 29, 2024, manufacturers would be allowed to follow either UL 471, 10th Edition or UL 60335–2–89, 2nd Edition. EPA is proposing allowing manufacturers to adhere to either standard for this limited time because the Agency recognizes that manufacturers may need time to make necessary changes including to their product labels. The period during which manufacturers may follow either standard should provide sufficient time for manufacturers to transition from UL 471 to UL 60335–2–89. EPA proposes that, beginning September 30, 2024, R–290 may only be used in new stand-alone units that meet all requirements in UL 60335–2–89 for the purposes of the SNAP program. See section II.H.1 for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference.

In addition, we are proposing that manufacturers would need to follow the set of use conditions that correspond with a specific UL standard (*i.e.,* when using UL 471, follow all use conditions in listing 2 and when using UL 60335–2–89, follow all use conditions in listing 4 in the proposed revisions to appendix R). After the transition period ends, stand-alone units manufactured with R–290 would need to follow UL 60335–2–89 for purposes of the SNAP program.

EPA also notes that we are not proposing to change two use conditions that currently apply, nor are we taking comment on those other use conditions. The use conditions that restrict the use of R–290 to new equipment specifically designed for this refrigerant, and that require red-colored markings on service ports, pipes, hoses, and other devices through which the refrigerant is serviced, repeat the current use conditions for R–290 in new stand-alone units. If the regulatory text is finalized as proposed, EPA would amend to add use conditions that apply to R–290 in new stand-alone units manufactured on or after the effective date of the final rule. Equipment manufactured before the effective date of the final rule would not be affected by this action and would hence be subject to the current use conditions included in appendix R.

8. How do the proposed use conditions for stand-alone units differ from the existing ones and why is EPA proposing to change the use conditions?

The revised use conditions EPA is proposing for stand-alone units are similar to the ones that exist today in appendix R to 40 CFR part 82, subpart G, for R–290 in this end-use category. The requirements that R–290 must be used in new equipment only, and that new stand-alone units must include red markings at service ports, pipes, hoses, and other devices through which the refrigerant is serviced, are repeated in this proposed listing. The updated use conditions concern incorporating by reference the most recent U.S. national standard and updated labeling requirements consistent with that new standard. Stand-alone units using R–290 manufactured before the effective date of a final rule to this proposal would not be affected by the updated use conditions.

Warning labels are required under EPA's current regulations, and EPA is proposing to continue to require them, although with some specific language changes. The proposed warning labels are similar to those required currently as use conditions for the use of R–290 in stand-alone units. EPA finds that using a common set of labels, similar to those from UL 60335–2–89, would aid in compliance and could reduce burden for the industry, especially for a manufacturer that uses more than one refrigerant. EPA is proposing that the labels must be provided in letters no less than 6.4 millimeter (¼ inch) high and must be permanent, which is identical to the current requirement for R–290 in stand-alone units.

EPA is proposing to incorporate by reference a new industry standard in the use conditions, including use of the 2nd edition of UL 60335–2–89 instead of continuing to require the standard Supplement SB of the 10th edition of UL 471 for equipment manufactured on or after the effective date of any final rule based on this proposal. UL 60335–2–89 was developed in an open and consensus-based approach, with the assistance of experts in the refrigeration and AC industry as well as experts involved in assessing the safety of products. The revision cycle for the 2nd edition, including final recirculation, concluded with its publication on October 27, 2021. The 2nd edition of UL 60335–2–89 replaces the previously published version of several standards, including UL 471, which had already been published as a 10th edition by that time. EPA was aware of the continuing progress of UL standards to address flammable refrigerants more appropriately. In SNAP Rule 23 (86 FR 24444, May 6, 2021), which listed a number of A2L refrigerants for use in the residential and light commercial AC and heat pumps (HPs) end-use, we stated, ''EPA understands that the standard we relied on in [SNAP] Rule 19 might 'sunset' in the future. Therefore, we will continue to evaluate the market for the equipment addressed in that rule, including R–290 in stand-alone units, and whether to establish new or revised use conditions that reference UL 60335–2–89.'' In this document, we are proposing such a change knowing that UL is replacing the standard to which such equipment is certified from UL 471 to the newer standard UL 60335–2–89 starting September 30, 2024.

To allow time for manufacturers of stand-alone units to transition between the current use condition using the 10th edition of UL 471, and the new use condition using the 2nd edition of UL 60335–2–89, EPA is proposing to allow R–290 to be used in stand-alone units manufactured either following UL 471 or UL 60335–2–89 during a transition period. We propose that transition period would begin on the effective date of the final rule based on this proposal

and would last through September 29, 2024. It is EPA's understanding that UL intends to sunset UL 471 on September 29, 2024, and EPA is proposing to coordinate with that sunset date. Beginning September 30, 2024, the use condition in effect would only allow R–290 to be used in new stand-alone units that follow UL 60335–2–89. In addition, we are proposing that manufacturers would need to follow the set of use conditions that correspond with a specific UL standard (*i.e.,* when using UL 471, follow all use conditions in listing 4 and when using UL 60335–2–89, follow all use conditions in listing 6 in the proposed revisions to appendix R).

Updating the UL standard incorporated as a use condition will provide more consistency amongst the products within the retail food refrigeration end-use. This change will allow the industry to focus on the most recent standard. The change will be helpful in implementing any transitions needed or planned for manufacturers, installers, and technicians. A manufacturer, who may offer different products within this end-use with different refrigerants, could use similar processes, such as in developing and applying the warning labels required. Installers and technicians, likewise, would not need to reference different standards depending on the type of equipment and the particular flammable refrigerant being used in that equipment, when putting in a new piece of equipment or servicing that equipment.

Another proposed revision to the use conditions is the limit on charge sizes. The current use conditions from SNAP Rule 17 require the charge sizes calculated consistent with UL 471, with a maximum charge of 150 g allowed. The proposed revised use conditions for equipment manufactured on or after the effective date of any final rule would allow charge sizes calculated based on UL 60335–2–89, which allows charges of up to 500 g of R–290 for open stand-alone units, or 300 g for those with doors and drawers.

Because of the differences between UL 471 and UL 60335–2–89, EPA performed a new risk screen for R–290 as a refrigerant in retail food refrigeration equipment, including stand-alone units.[31] In this risk screen, EPA adjusted charge sizes to be consistent with the larger charge sizes of 300 g and 500 g allowed for R–290 under UL 60335–2–89. The risk screen also considered the impact of mitigation methods such as valves that would restrict the amount of refrigerant that could be released. The updated risk screen found that concentrations of R–290 still would not exceed the LFL when used according to the proposed use condition and consistent with UL 60335–2–89, and thus the proposed new use conditions would also address potential flammability risks of using R–290.[32] In addition, the risk screen modeled the reasonable work case scenario of short-term exposure (15-minute TWA) due to a catastrophic release of the charge. Under this highly conservative scenario, the worst-case exposure of 5,770 ppm was still significantly lower than the Acute Toxicity Exposure Limit (ATEL) of 50,000 ppm.[33] For further information, see the risk screen in the docket for this rulemaking.

9. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to the proposed listing for R–290 in new refrigerated food processing and dispensing equipment and the proposed revised listing for R–290 in new stand-alone units. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. EPA notes that the additional information is similar to, but not identical with, the addition information in the listing for R–290 in stand-alone units in SNAP Rule 17. EPA is proposing additional information consistent with that included in the other proposed listings for stand-alone units in this rule and consistent with that included in the listings for R–290 as acceptable, subject to use conditions, in stand-alone units in Rule 17. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

10. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed decision to list R–290 acceptable, subject to use conditions, in new refrigerated food processing and dispensing equipment as discussed in this section II.B. EPA also requests comments on the proposed change in use conditions for use of R–290 in stand-alone units, and if and how such change would affect the safety of stand-alone units using R–290. The Agency requests comment on the time periods during which manufacturers are to follow UL 471, either UL 471 or UL 60335–3–89, or only UL 60335–2–89. EPA also requests comments on the proposed use conditions for use of R–290 in new refrigerated food processing and dispensing equipment, including the proposed requirements to comply with UL 60335–2–89. With respect to this standard, EPA is requesting comment on the risk mitigation offered by compliance with the current version of the standard proposed as use conditions, *i.e.,* UL 60335–2–89, the nature of updates proposed for this standard, and the expected timeline for those updates. EPA is requesting comment on the applicability of the 2nd edition of UL 60335–2–89 to refrigerated food processing and dispensing equipment, including which types of equipment, under which applications the standard applies, and whether the listing of R–290 should apply to refrigerated food processing and dispensing equipment that has a remote compressor and is not self-contained.

C. Commercial Ice Machines—Proposed Listing of HFC–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as Acceptable, Subject to Use Conditions, for Use in New Commercial Ice Machines

EPA is proposing to list HFC–32, HFO–1234yf, and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new commercial ice machines.

Several use conditions proposed for commercial ice machines are common to those proposed for other end-uses. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. For commercial ice machines, those are the only use conditions EPA is proposing. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

[31] ICF, 2023h. Op. cit.

[32] Ibid.

[33] The source of the ATEL is ASHRAE 34–2022, as cited in ICF, 2023h. Op cit.

If the regulatory text is finalized as proposed, EPA would revise the existing listing for R–290 in new self-contained commercial ice machines in appendix V to 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the commercial ice machines end-use, as well as certain other previous listings that EPA is republishing for purposes of formatting for the **Federal Register**; EPA is not proposing substantive changes to, and is not taking comment on, those earlier decisions (*i.e.,* listings for R–290 in new water coolers and in new very low temperature refrigeration equipment).

1. Background on Commercial Ice Machines

Commercial ice machines are used in commercial establishments (*e.g.,* hotels, restaurants, convenience stores) to produce ice for consumer use. Commercial ice machines [34] are another subset of commercial refrigeration and are considered a separate end-use within the SNAP program from retail food refrigeration due to differences in where such equipment is placed and the additional mechanical and electronic components required to make and dispense ice. Ice machines produce ice in various sizes and shapes, and with different retrieval mechanisms (*e.g.,* dispensers or self-retrieval from bins). Many commercial ice machines are self-contained units, while some have the condenser separated from the portion of the machine making the ice and have refrigerated lines running between the two (also known as remote equipment). Commercial ice machines fall under the scope of UL 60335–2–89, ''Household and Similar Electrical Appliances—Safety—Part 2–89: Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor.''

This proposal, if finalized, would list HFC–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, in new commercial ice machines.

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE 34–2022 categorizes the refrigerants proposed for commercial ice machines in this section as being in the A2L Safety Group. See section II.A.2 for further discussion on ASHRAE classifications of these refrigerants.

[34] Industry standards for this type of equipment, *e.g.,* UL 563 and UL 60335–2–89, use the terms ''ice maker'' or ''ice-maker'' rather than commercial ice machines. The terms may be used interchangeably and refer to the same equipment.

3. What are HFC–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A and how do they compare to other refrigerants in the same end-use?

See section II.A.3 for further discussion on the environmental, flammability, toxicity, and exposure information for HFC–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A.[35]

HFC–32 is also known as R–32 or difluoromethane (CAS Reg. No. 75–10–5). R–454B, also known by the trade names ''Opteon™ XL 41'' and ''Puron Advance™,'' is a blend consisting of 68.9 percent HFC–32 and 31.1 percent HFO–1234yf. Redacted submissions and supporting documentation for HFC–32, HFO–1234yf, and the refrigerant blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed a risk screening assessment to examine the health and environmental risks of each of these substitutes. These risk screens are available in the docket for this proposed rule.[36] [37] [38] [39] [40] [41] [42] [43]

Comparison to other substitutes in this end-use: HFC–32, HFO–1234yf, and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in new commercial ice machines, such as HFC–134a, R–410A, and R–513A, with ODPs of zero.

HFO–1234yf has a GWP of less than four, comparable to that of R–290 and ammonia with GWPs of 3 and zero. R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 470, higher than some of the acceptable substitutes for new commercial ice machines, including R–290 and ammonia with GWPs of 3 and zero, respectively, and lower than those of other substitutes such as R–450A and R–513A, with GWPs of about 600 and 630. HFC–32 has a GWP of 675, higher than some of the acceptable substitutes including R–290, R–450A, and R–513A; however, the GWP of HFC–32 is lower than those of R–410A and R–404A, with GWPs of approximately 2,090 to 3,920, which are refrigerants that have typically been employed in such systems. Our initial evaluation is that the characteristics of HFC–32 meet the technical needs of larger commercial ice machines, providing larger charge sizes, greater capacity and no glide, allowing for even formation of ice, while lower-GWP alternatives do not. For instance, R–513A and R–450A have lower capacity than HFC–32, and R–290 is restricted to smaller charge sizes (see section II.D for further information). Remote appliances using A2L refrigerants, including remote condensers, may be either self-contained or field erected and may be factory or field charged.

Information regarding the toxicity of other available alternatives is provided in the previous listing decisions for new commercial ice machines (*https://www.epa.gov/snap/substitutes-commercial-ice-machines*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit of HFC–32, HFO–1234yf, and the refrigerant blends in these end-uses are evaluated in the risk screens referenced previously. The toxicity risks of using HFC–32, HFO–1234yf, and the refrigerant blends in new commercial ice machines are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the proposed refrigerants can be mitigated by use consistent with UL 60335–2–89, ASHRAE 15–2022, and other industry standards; recommendations in the manufacturers' SDS; and other safety precautions common in the refrigeration and AC industry.

The flammability risks of HFC–32, HFO–1234yf, and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–

[35] EPA previously listed HFO–1234yf as acceptable, subject to use conditions, in motor vehicle AC in light-duty vehicles (74 FR 53445, October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778, December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276, May 4, 2022). EPA previously listed R–454A, R–454B, R–454C, and R–457A as acceptable, subject to use conditions, as substitutes in residential and light commercial AC and HPs (86 FR 24444, May 6, 2021). EPA previously listed HFC–32 as acceptable, subject to use conditions, in self-contained room air conditioners (80 FR 19453, April 10, 2015) and listed HFC–32 as acceptable, subject to use conditions, in the remaining types of residential and light commercial air conditioning and heat pumps.

[36] ICF, 2023i. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: HFC–32.

[37] ICF, 2023j. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: HFO–1234yf.

[38] ICF, 2023k. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454A (Opteon® XL40).

[39] ICF, 2023l. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454B.

[40] ICF, 2023m. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454C (Opteon™ XL20).

[41] ICF, 2023n. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–455A (Solstice® L40X).

[42] ICF, 2023o. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–457A (Forane® 457A).

[43] ICF, 2023p. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–516A (Forane® 516A).

457A, and R–516A in the new commercial ice machine end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced previously in this section. While these refrigerants may pose greater flammability risk than other available, non-flammable substitutes in the new commercial ice machines end-use, this risk can be mitigated by use consistent with ASHRAE 15–2022 and UL 60335–2–89, required by our proposed use conditions, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in the new commercial ice machines end-use.

In addition, the proposed substitutes have lower GWPs than most other available alternatives for new commercial ice machines. The proposed refrigerants provide additional lower-GWP options for situations where other refrigerants with lower GWPs are not viable, such as for use of HCs in systems with remote compressors or equipment requiring larger charge sizes, where equipment using CO_2 may not be able to meet energy conservation standards from the DOE, or where a refrigerant must have minimal glide to ensure consistent freezing while manufacturing ice. Given the wide range of applications and exacting performance requirements for commercial ice machines, not all refrigerants listed as acceptable under SNAP will be suitable for the range of equipment in new commercial ice machines. To provide additional options to ensure the availability of substitutes with lower GWP for the full range of new commercial ice machines and, therefore, lower overall risk to human health and the environment, EPA is proposing the listings for HFC–32, HFO–1234yf, and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new commercial ice machines.

4. Why is EPA proposing these specific use conditions?

EPA is proposing to list HFC–32, HFO–1234yf, and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new commercial ice machines. The use conditions identified in these proposed listings are explained in section II.H.1 in greater detail.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed decision to list HFC–32, HFO–1234yf, and R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, in new commercial ice machines as discussed in this section II.C. EPA seeks comment on the risk mitigation offered by the proposed use conditions, including requiring compliance with UL 60335–2–89, except to the extent the proposed rule conflicts with the UL Standard, in which case we propose that the use conditions specified in the rule would apply. We also request comment on whether EPA should consider other use conditions to further mitigate potential risk from the proposed refrigerants in this end-use. EPA requests comment on whether commercial ice machines have been designed for or manufactured with the refrigerants proposed and any information on the safety of such equipment in other countries, and if and how such experience would translate to safe use in the United States.

D. Commercial Ice Machines—Proposed Revision of Use Conditions in the Previous Listing of R–290 as Acceptable, Subject to Use Conditions, for Use in New Self-Contained Commercial Ice Machines

EPA is proposing to revise use conditions in the previous listing of R–290 as acceptable, subject to use conditions, for use in new self-contained commercial ice machines. More specifically, EPA previously listed R–290 as acceptable, subject to use conditions, in new self-contained commercial ice machines in SNAP Rule 21 (81 FR 86779, December 1, 2016). In this document, we are proposing to update those use conditions to be consistent with the most recent U.S. national standard for commercial refrigeration equipment, including commercial ice machines, the 2nd edition of UL 60335–2–89. Similar use conditions would apply to other refrigerants with lower flammability as proposed in this SNAP action in section II.C above. The proposed revised use conditions would be allowed for such equipment manufactured on or after the effective date of any final rule and would not apply to nor affect equipment manufactured before the effective date of any final action and manufactured in compliance with the SNAP requirements applicable at the time of manufacture.

This proposed revision to the use conditions would incorporate by reference a different industry standard, changing the reference from Supplement SA to the 8th edition, dated July 31, 2009, of the standard UL 563, ''Ice Makers'' to the 2nd edition of UL 60335–2–89. EPA is proposing a transition period during which self-contained commercial ice machines manufactured with R–290 may follow either the earlier standard UL 563 or UL 60335–2–89. After the transition period ends, self-contained commercial ice machines manufactured with R–290 would need to follow UL 60335–2–89 for purposes of the SNAP program.

Several use conditions proposed for this end-use are similar to those proposed for other end-uses. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed include the following: restricting the use of the refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards. The regulatory text of the proposed decisions appears in tables at the end of this document.

If the regulatory text is finalized as proposed, EPA would revise the existing listing for R–290 in new self-contained commercial ice machines in appendix V to 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for new self-contained commercial ice machines in appendix V, as well as certain other previous listings that EPA is republishing for purposes of formatting for the **Federal**

Register*;* EPA is not proposing substantive changes to, and is not taking comment on, those earlier decisions (*i.e.,* listings for R–290 in new water coolers and in new very low temperature refrigeration equipment).

1. Background on commercial ice machines

See section II.C.1 for background on this end-use.

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE 34–2022 categorizes R–290 as being in the A3 Safety Group. See section II.A.2 for further discussion on ASHRAE classifications.

3. What is R–290 and were is there information on its use in this end-use?

See section II.B.3 for further discussion on the identity, environmental, flammability, toxicity, and exposure information for R–290.

Redacted submissions and supporting documentation for R–290 are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed a risk screening assessment to examine the health and environmental risks of this substitute in self-contained commercial ice machines. The risk screen is available in the docket for this proposed rule.[44]

4. What use conditions currently apply to this refrigerant in this end-use?

EPA previously listed R–290 acceptable, subject to use conditions, in new self-contained commercial ice machines in SNAP Rule 21 (81 FR 86779, December 1, 2016). Those requirements are codified in appendix V to 40 CFR part 82, subpart G. EPA provided information on the environmental and health risks of R–290 and the various substitutes available at that time for use in this end-use. Additionally, EPA's previous risk screen for this refrigerant, based on the use conditions in that rule, is available in the docket for that previous rulemaking (EPA–HQ–OAR–2015–0663).

R–290 has an ASHRAE classification of A3, indicating that it has low toxicity and higher flammability. In the presence of an ignition source (*e.g.,* static electricity, a spark resulting from a closing door, or a cigarette), an explosion or a fire could occur if the concentration of R–290 were to exceed the LFL of 21,000 ppm (2.1 percent) by volume.

[44] ICF, 2023q. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: (R–290).

The use conditions established in the 2016 listing for R–290 in new self-contained commercial ice machines addressed safe use of this flammable refrigerant and included the following: incorporation by reference of Supplement SA to the 8th edition (July 31, 2009, including revisions through November 29, 2013) of the standard UL 563, ''Ice Makers''; refrigerant charge size limits based on cooling capacity and type of equipment; and requirements for markings and warning labels on equipment using the refrigerant to inform consumers, technicians, and first responders of potential flammability hazards. Our assessment and listing decisions in SNAP Rule 21 (81 FR 86779, December 1, 2016) found that with the use conditions, the overall risk of this substitute, including the risk due to flammability, was not significantly greater risk in this end-use than other substitutes that are currently or potentially available for that same end-use.

5. What updates to the existing use conditions for commercial ice machines is EPA proposing?

EPA is proposing to update the use conditions that apply to R–290 in new self-contained commercial ice machines manufactured on or after the effective date of any final rule based on this proposal. Several of the updated use conditions proposed for use of R–290 in self-contained commercial ice machines are common to those proposed for the stand-alone units end-use in section II.B, and other are common to all five end-uses in this proposed rule. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. For R–290 in self-contained commercial ice machines, these are the only revised use conditions EPA is proposing. In summary, with the updates proposed to the use conditions for new self-contained commercial ice machines, the common use conditions proposed include the following: restricting the use of the refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

If finalized as proposed, the use conditions in this action would apply to new self-contained commercial ice machines manufactured on or after the effective date of the final rule. Any final rule would not apply to nor affect equipment manufactured before the effective date of this action and manufactured in compliance with the SNAP use conditions applicable at the time of manufacture as stipulated in SNAP Rule 21 and appendix V to 40 CFR part 82, subpart G. EPA views equipment to be manufactured at the date upon which the appliance's refrigerant circuit is complete, the appliance can function, the appliance holds a full refrigerant charge, and the appliance is ready for use for its intended purposes. For new self-contained commercial ice machines, this occurs at the factory. If this rule is finalized as proposed, new self-contained commercial ice machines manufactured between January 3, 2017, and the effective date of the final rule based on this proposal would be required to meet the use conditions in SNAP Rule 21 (which took effect January 3, 2017) and as listed in appendix V to 40 CFR part 82, subpart G (in listing 1), including the use condition incorporating by reference Supplement SA to the 8th edition of UL 563. Such products would be permitted to be warehoused and sold through normal channels, even if they are sold or installed after the effective date of any final rule based on this proposed rule. Self-contained ice machines using R–290 manufactured on or after the effective date of any final rule based on this proposal through September 29, 2024, would be required to meet the use conditions so finalized and listed in the revisions to appendix V. Those use conditions would allow manufacturers of new self-contained commercial ice machines using R–290 to follow either UL 563 or UL 60335–2–89 from the effective date of any final rule based on this proposal and would last through September 29, 2024. On and after September 30, 2024, the use condition for use of R–290 in equipment that meets UL 60335–2–89 only would apply under SNAP.

EPA is proposing use conditions allowing new self-contained commercial ice machines to be manufactured consistent with Supplement SA of UL 563, up to and including September 29, 2024, which is the date when UL is sunsetting UL 563. Therefore, during the time between the effective date of any final rule based on this proposal and September 29, 2024, manufacturers would be allowed to follow either UL 563, 8th Edition or UL 60335–2–89, 2nd Edition. EPA is proposing allowing manufacturers to adhere to either

standard for this limited time because the Agency recognizes that manufacturers may need time to make necessary changes including to their product labels. The period during which manufacturers may follow either standard should provide sufficient time for manufacturers to transition from UL 563 to UL 60335–2–89. EPA proposes that, beginning September 30, 2024, R–290 may only be used in new self-contained commercial ice machines that meet all requirements in UL 60335–2–89 for the purposes of the SNAP program. See section II.H.1 for further discussion on the requirements of this standard that EPA is proposing to incorporate by reference.

In addition, we are proposing that manufacturers would need to follow the set of use conditions that correspond with a specific UL standard (*i.e.,* when using UL 563, follow all existing use conditions in listing 1 and when using UL 60335–2–89, follow all use conditions in listing 3 in the proposed revisions to appendix V). After the transition period ends, stand-alone units manufactured with R–290 would need to follow UL 60335–2–89 for purposes of the SNAP program.

EPA also notes that we are not proposing to change two use conditions that currently apply, nor are we taking comment on those other use conditions. The use conditions that restrict the use of R–290 to new equipment specifically designed for this refrigerant, and that require red-colored markings at service ports, pipes, hoses, and other devices through which the refrigerant is serviced, are current use conditions for R–290 in new self-contained commercial ice machines.

If the regulatory text is finalized as proposed, EPA would amend to add use conditions that apply to R–290 in new self-contained commercial ice machines manufactured on or after the effective date of the final rule. Equipment manufactured before the effective date of the final rule would not be affected by this action and would hence be subject to the current use conditions included in appendix V.

6. How do the proposed use conditions for commercial ice machines differ from the existing ones and why is EPA proposing to change the use conditions?

The updated use conditions EPA is proposing are similar to the ones that exist today in appendix V to 40 CFR part 82, subpart G, for R–290 in this end-use. The proposed requirements that R–290 must be used in new equipment only and that new self-contained commercial ice machines must include red markings at service ports, pipes, hoses, and other devices through which the refrigerant is serviced, are repeated in this proposed listing. The revised use conditions concern incorporating by reference the most recent U.S. national standard for commercial ice machines and labeling requirements consistent with that new standard. Self-contained commercial ice machines using R–290 manufactured before the effective date of a final rule based on this proposal would not be affected by the revised use conditions.

Warning labels are required under EPA's current regulations, and EPA is proposing to continue to require them, although with some specific language changes. EPA is proposing warning labels that are identical to those required as use conditions for the use of R–290 in self-contained commercial ice machines. EPA finds that using a common set of labels, similar to those from UL 60335–2–89, would aid in compliance and could reduce burden for the industry, especially for a manufacturer that uses more than one refrigerant. EPA is proposing that the labels must be provided in letters no less than 6.4 millimeter (¼ inch) high and must be permanent, which is identical to the current requirement for R–290 in self-contained commercial ice machines.

EPA is proposing to update the standard incorporated by reference in the use conditions, and after a transition period, replacing the requirement to follow Supplement SA of the 8th edition of UL 563 with the proposed requirement to adhere to the 2nd edition of UL 60335–2–89. UL 60335–2–89 was developed in an open and consensus-based approach, with the assistance of experts in the refrigeration and AC industry as well as experts involved in assessing the safety of products. The revision cycle for the 2nd edition, including final recirculation, concluded with its publication on October 27, 2021. The 2021 standard UL 60335–2–89 replaces the previously published version of several standards, including UL 563, which had already been revised into an 8th edition by that time. EPA was aware of the continuing progress of UL Standards to address flammable refrigerants more appropriately. In this document, we are proposing such a change knowing that UL is replacing the standard to which such equipment is certified from UL 563 to the newer UL 60335–2–89 as of September 30, 2024.

To allow time for manufacturers of self-contained commercial ice machines to transition between the current use condition using the 8th edition of UL 563, and the new use condition using the 2nd edition of UL 60335–2–89, EPA is proposing to allow R–290 to be used in self-contained commercial ice machines manufactured either following UL 563 or UL 60335–2–89 during a transition period. We propose that transition period would begin on the effective date of any final rule based on this proposal and would last through September 29, 2024. It is EPA's understanding that UL intends to sunset UL 563 on September 29, 2024, and EPA is proposing to coordinate with that sunset date. Beginning September 30, 2024, the use condition in effect would only allow R–290 to be used in new self-contained commercial ice machines that follow UL 60335–2–89. In addition, we are proposing that manufacturers would need to follow the set of use conditions that correspond with a specific UL standard (*i.e.,* when using UL 563, follow all use conditions in listing 1 and when using UL 60335–2–89, follow all use conditions in listing 3 in the proposed revisions to appendix V).

Incorporating UL 60335–2–89 by reference in a use condition would allow the industry to manufacture and test refrigeration equipment following the most recent standard, which provides additional flexibility and safeguards when using flammable refrigerants. The transition period when equipment may follow either UL standard would be helpful in implementing any transitions needed or planned for manufacturers, installers, and technicians. A manufacturer, who may offer different products within this end-use with different refrigerants, could use similar processes, such as in developing and applying the warning labels required.

Another proposed revision to the use conditions is the limit on charge sizes. The current use conditions from SNAP Rule 21 require the charge sizes from UL 563 calculated consistent with UL 563, with a maximum charge size of 150 g allowed. The proposed revised use conditions for equipment manufactured on or after the effective date of any final rule would allow charge sizes calculated based on UL 60335–2–89, which would allow charge sizes of R–290 up to approximately 500 g for open equipment, 300 g for equipment with doors or drawers, or 115 g for equipment near a pathway for egress. These changes would allow the use of R–290 in larger equipment than previously and would provide more options for industry, while maintaining safety.

Because of the differences between UL 563 and UL 60335–2–89, EPA performed a new risk screen for R–290 as a refrigerant in commercial ice

machines.[45] In this risk screen, EPA adjusted charge sizes to be consistent with the larger charge sizes allowed for R–290 under UL 60335–2–89. The risk screen also considered the impact of mitigation methods such as valves that would restrict the amount of refrigerant that could be released. The updated risk screen found that concentrations of R–290 still would not exceed the LFL when used according to the proposed use condition and consistent with UL 60335–2–89, and thus the proposed new use conditions would also address potential flammability risks of using R–290.[46] In addition, the risk screen modeled the reasonable worst-case scenario of short-term exposure (15-minute TWA) due to a catastrophic release of the charge. Under this highly conservative scenario, the worst-case exposure was still significantly lower than the ATEL of 50,000 ppm.[47] For further information, see the risk screen in the docket for this rulemaking.

7. What additional information is EPA including in this proposed listing?

EPA is providing additional information related to this proposed listing. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. EPA notes that the additional information is similar to, but not identical with, the addition information in the listing for R–290 in self-contained commercial ice machines in SNAP Rule 21. EPA is proposing additional information consistent with that included in the other proposed listings for stand-alone units in this rule and consistent with that included in the listings for R–290 as acceptable, subject to use conditions, in self-contained commercial ice machines in Rule 21. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

8. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed updates to the use conditions as discussed in this section II.D. EPA requests comments on the proposed change in use conditions and if and how such change would affect the safety of self-contained commercial ice machines using R–290. EPA is requesting comment on the risk mitigation offered by compliance with the current version of the standard proposed as use conditions, *i.e.,* UL 60335–2–89, the nature of updates proposed for this standard, and the expected timeline for those updates. The Agency also requests comment on allowing a transition period where either of two sets of use conditions, including either UL 563 or UL 60335–2–89, may be followed and on the specific dates for the transition period. EPA is requesting comment on the applicability of the 2nd edition of UL 60335–2–89 to new self-contained commercial ice machines, including which types of equipment, under which applications the standard applies, and whether the listing of R–290 should apply to commercial ice machines that have a remote compressor and are not self-contained.

E. Industrial Process Refrigeration—Proposed Listing of HFC–32, HFO–1234yf, HFO–1234ze(E), R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as Acceptable, Subject to Use Conditions, for Use in New Industrial Process Refrigeration

EPA is proposing to list HFC–32, HFO–1234yf, HFO–1234ze(E), and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new industrial process refrigeration.

Most of the use conditions proposed for the proposed A2L refrigerants when used in IPR are the same as those proposed for other end-uses. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

The following use condition also applies for R–32 and R–454B in industrial process refrigeration: these substitutes may only be used in chillers for IPR.

The following use condition also applies for R–454A in IPR: this substitute may only be used either in chillers for IPR, in equipment with a refrigerant charge capacity less than 200 pounds, or in the high temperature side of a cascade system.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix Y to 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-use discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition, or DOT requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from IPR equipment are likely to be hazardous waste under RCRA (see 40 CFR parts 260 through 270).

1. Background on Industrial Process Refrigeration

IPR systems cool process streams in industrial applications, for example, machining of metal products, fermentation of beer, or operation of hydraulic circuits. The choice of substitute for specific applications depends on ambient and required operating temperatures and pressures. It is EPA's understanding that this type of equipment generally falls under the scope of UL 60335–2–89, ''Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor.'' In contrast, industrial process air conditioning primarily cools people, may also cool processes, and follows a different UL standard. In addition, sometimes chillers are used primarily to cool process streams, rather than for comfort cooling. EPA describes this application as ''chillers in IPR.''

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE 34–2022 categorizes the refrigerants proposed for IPR in this section as being in the A2L Safety Group. See section II.A.2 for further discussion on ASHRAE classifications.

3. What are HFC–32, HFO–1234yf, HFO–1234ze(E), R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A and how do they compare to other refrigerants in the same end-use?

See section II.A.3 for further discussion on the environmental, flammability, toxicity, and exposure information for these refrigerants.

[45] ICF, 2023q. Op. cit.

[46] Ibid.

[47] Ibid.

The redacted submission and supporting documentation for HFC–32, HFO–1234yf, HFO–1234ze(E), blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A is provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed risk screening assessments to examine the health and environmental risks of these substitutes. These risk screens are available in the docket for this proposed rule.[48] [49] [50] [51] [52] [53] [54] [55] [56]

Comparison to other substitutes in this end-use: HFC–32, HFO–1234yf, HFO–1234ze(E), and blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in new IPR equipment, such as HFC–134a, R–410A, and R–513A with ODPs of zero and hydrochlorofluoroolefin (HCFO)–1233zd(E) with an ODP less than 0.0004.[57]

HFO–1234yf and HFO–1234ze(E) have GWPs less than four and less than six, respectively, comparable to that of R–290 and ammonia with GWPs of 3 and zero. R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 470, higher than some of the acceptable substitutes for new IPR equipment, including R–290 and ammonia, and lower than those of other substitutes such as R–450A and R–513A with GWPs of about 600 and 630. HFC–32 has a GWP of 675, which is higher than some of the acceptable substitutes including R–290, R–450A, and R–513A; however, the GWP of HFC–32 is lower than those of R–410A and R–404A, with GWPs of approximately 2,090 to 3,920, which are refrigerant that have typically been employed in chillers for IPR.

Information regarding the toxicity of other available alternatives is provided in the previous listing decisions for new IPR (*https://www.epa.gov/snap/substitutes-industrial-process-refrigeration*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limits of HFC–32, HFO–1234yf, HFO–1234ze(E), R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A in this end-use, is evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf and the refrigerant blends in IPR, and of using all nine refrigerants in chillers for IPR, are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the proposed refrigerants can be mitigated by use consistent with ASHRAE 15–2022 and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risks with HFC–32, HFO–1234yf, HFO–1234ze(E), R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A in the IPR end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced in this section above. While these refrigerants may pose greater flammability risk than available substitutes in the new IPR end-use that are non-flammable, this risk can be mitigated by use consistent with ASHRAE 15–2022 and UL 60335–2–89, required by our proposed use conditions, as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. We also note that other acceptable refrigerants in the IPR end-use have higher flammability and are classified in the A3 Safety Group, such as R–290, butane (R–600), and propylene (R–1270). EPA is proposing use conditions to reduce the potential risk associated with the flammability of the proposed alternatives so that they will not pose significantly greater risk than other acceptable substitutes in the new IPR end-use.

In addition, the proposed substitutes have lower GWPs than most other available alternatives for the same uses. The proposed refrigerants may provide additional lower-GWP options for situations where other refrigerants with lower GWPs are not viable, such as situations where sparks or flame might occur such that HCs are not suitable for use, or for systems with remote compressors or equipment requiring larger charge sizes, where refrigerant leaks are more likely to create greater flammability risk. Given the wide range of applications for IPR, not all refrigerants listed as acceptable under SNAP will be suitable for the range of equipment in the IPR end-use. To provide additional options to ensure the availability of substitutes for the full range of IPR equipment with lower GWP and, therefore, lower overall risk to human health and the environment, EPA is proposing the listings for HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in IPR.

EPA is also proposing to list the refrigerants HFC–32 and R–454B with a use condition restricting their use to chillers in IPR. These refrigerants have higher GWPs than the other refrigerants EPA is proposing to list as acceptable, subject to use conditions; lower GWPs than many currently listed acceptable substitutes for IPR that are commonly in use; and lower flammability than HC refrigerants currently listed as acceptable in IPR. The Agency expects that these refrigerants may provide additional, lower-GWP options for chillers for IPR, where greater volumetric capacity and higher operating pressures may be required to operate properly than for other types of IPR equipment (*e.g.,* direct expansion systems), to address applications where other substitutes with lower GWPs may not be technically feasible.

EPA is also proposing to list the refrigerant R–454A with a use condition that this substitute may only be used either in chillers for IPR, in equipment with a refrigerant charge capacity less than 200 pounds, or in the high temperature side of a cascade system. This refrigerant may provide additional, lower-GWP options for chillers for IPR, where greater volumetric capacity and higher operating pressures may be required to operate properly than for other types of IPR equipment. R–454A may also address the additional challenges for finding lower GWP refrigerants with higher capacity for ice skating rinks with moderate charge sizes and for cascade systems, EPA is proposing to list R–454A as acceptable, subject to use conditions, for use in new ice skating rinks with a charge size capacity less than 200 pounds or for use

[48] ICF, 2023r. Risk Screen on Substitutes in Industrial Process Refrigeration (New Equipment); Substitute: HFC–32 (Difluoromethane).

[49] ICF, 2023s. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: HFO–1234yf.

[50] ICF, 2023t. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: HFO–1234ze(E) (Solstice® ze, Solstice® 1234ze).

[51] ICF, 2023u. Risk Screen on Substitutes in Industrial Process Refrigeration and Cold Storage Warehouses (New Equipment); Substitute: R–454A (Opteon® XL40).

[52] ICF, 2023v. Risk Screen on Substitutes in Industrial Process Refrigeration (New Equipment); Substitute: R–454B (Opteon® XL41).

[53] ICF, 2023w. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–454C (Opteon™ XL20).

[54] ICF, 2023x. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–455A (Solstice® L40X).

[55] ICF, 2023y. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–457A.

[56] ICF, 2023z. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–516A.

[57] WMO, 2018.

in the high-temperature side of a cascade system.

4. Why is EPA proposing these specific use conditions?

The use conditions identified in the proposed listings above for all nine refrigerants are explained in section II.H.1 in greater detail.

EPA is proposing the use condition for HFC–32 and R–454B restricting their use to chillers for IPR because these substitutes have higher GWPs than many of the available substitutes in IPR (*e.g.,* HCs, HFOs); however, because chillers may require greater volumetric capacity than other types of IPR equipment (*e.g.,* DX systems), EPA is proposing to list these two additional refrigerants to provide additional options and to address a broader range of equipment and applications. EPA also is proposing a use condition for R–454A that would allow its use in chillers for IPR, as well as other certain other applications, as described below in this section. In addition, the Agency previously listed HFC–32, R–454A, and R–454B as acceptable, subject to use conditions, in centrifugal and positive displacement chillers for comfort cooling in SNAP Rule 25. EPA is proposing to list the same refrigerants the same way for the same type of equipment (chillers) because of similar technical issues, such as volumetric capacity and operating pressure, which restrict the technical viability of alternatives for some applications.

EPA is proposing to list R–454A as acceptable, subject to use conditions, in IPR with a use condition that this substitute may only be used in chillers for IPR, in equipment with a refrigerant charge capacity less than 200 pounds or in the high-temperature side of a cascade system. EPA is proposing to allow use of R–454A for use in chillers for IPR for the same reasons as above for HFC–32 and R–454B. The Agency is also proposing this use condition to allow use of R–454A less broadly than for the refrigerants HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A because its GWP is higher than those other proposed listings for non-chiller IPR equipment (that has a GWP of about 240, compared to less than four to 150). EPA's understanding is that, in addition to the technical constraints for refrigerant in chillers, there are two more situations where use of refrigerants is likely to be more constrained, and thus, additional refrigerant options may be helpful. The first of those situations is in what industry standard ASHRAE 15–2022 identifies as a refrigerating system having a ''high probability'' that leaked refrigerant from a failed connection, seal, or component could enter an occupied area. An example of such a constraint is that ASHRAE 15–2022 and UL 60335–2–89 effectively set charge limits for A2L refrigerants to less than 200 pounds for applications inside an occupied space where people might be located. In contrast, larger charge sizes could be used in ''low-probability'' locations where the general public is unlikely to come in contact with the refrigerant, such as systems used outdoors or in a machinery room with access restricted to facility employees. Where the general public is unlikely to come into contact with any leaked refrigerant, such as where charge sizes of 200 pounds or more of A2L refrigerant would be allowed under the use conditions incorporating UL 60335–2–89 and ASHRAE 15–2022, there would be fewer space constraints and greater flexibility in equipment design, so refrigeration system designers can accommodate a narrower set of substitutes. Conversely, where people are more likely to come into contact with any leaked refrigerant in an interior space, refrigerant charge capacities of a system would be less than 200 pounds; there would be more space constraints, less flexibility in equipment design, and potentially stricter code requirements, leading to a need for more refrigerant options. Allowing the additional option of R–424A for non-chiller IPR equipment with smaller refrigerant charges would enable the use of a wider set of available substitutes to manage safety (in particular, flammability and toxicity), as well as allowing more options to achieve adequate performance where there may be more constraints. Therefore, EPA is proposing to list R–454A as acceptable, subject to use conditions, only for non-chiller IPR equipment with a refrigerant charge capacity less than 200 pounds.

EPA is also proposing to list R–454A as acceptable, subject to use conditions, for use in the high temperature side of cascade systems used for non-chiller IPR equipment. As discussed above in section II.A.1, ''Background on retail food refrigeration,'' each system of a cascade system uses a different refrigerant that is most suitable for the given temperature range. Higher temperature systems, or the ''high temperature side,'' have typically used HFCs as a refrigerant; however, it is technologically achievable and has become more common to use ammonia in the high temperature side. For lower temperature systems, or the ''low temperature side'' of the cascade system, low boiling refrigerants such as R–744 can be used. Considerations for the choice of refrigerant on the high or low temperature side of cascade systems are influenced by many factors including, but not limited to, a refrigerant's toxicity and flammability, its temperature glide, and its suitability to lower temperature applications. EPA understands that use of flammable or toxic refrigerants, such as ammonia, on the high temperature side of a cascade may be limited in certain circumstances (*e.g.,* based on building codes and/or standards). EPA notes that there are a number of substitutes available for the low temperature side of the cascade system with GWPs lower than that of R–454A. Therefore, instead of proposing to list R–454A as acceptable, subject to narrowed use limits and subject to use conditions, EPA is proposing to list R–454A as acceptable, subject to use conditions, when it is used in the high temperature side of cascade systems; this would expand the refrigerant options that can comply with local building codes and industry safety standards while meeting the more challenging application of the high temperature side of a cascade system.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed decision to list HFC–32, HFO–1234yf, HFO–1234ze(E), and the refrigerant blends R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, in IPR as discussed in this section II.E. EPA seeks comment on the risk mitigation offered by the proposed use conditions, including requiring compliance with the 2nd edition of UL 60335–2–89, except to the extent the proposed rule conflicts with the UL standard, in which case we propose that the conditions specified in the rule would apply. We also request comment

on whether other use conditions would offer needed risk mitigation for the flammable refrigerants proposed. EPA requests comment on whether types of IPR equipment have been designed for the refrigerants proposed; any information on the safety of such equipment in other countries; and if and how such experience would translate to safe use in the United States. The Agency requests comment on whether HFC–32, R–454A, and R–454B should be listed as acceptable for chillers in IPR given their higher GWP than some other alternatives listed as acceptable, if they should not be listed in IPR at all, or if they should be listed as acceptable for all types of IPR equipment, and if so, why. Depending on public comments and information received, EPA may revise the substitutes listed with a use condition for use only in chillers for IPR or may not finalize some of the proposed listings.

F. Cold Storage Warehouses—Proposed Listing of HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A and R–516A as Acceptable, Subject to Use Conditions, for Use in New Cold Storage Warehouses

EPA is proposing to list HFO–1234yf, HFO–1234ze(E), and the refrigerant blends R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new cold storage warehouses.

Several use conditions proposed for cold storage warehouses are common to those proposed for the other end-uses in this rule. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

The following proposed use condition would also apply to R–454A in cold storage warehouses: this substitute may only be used either in equipment with a refrigerant charge capacity less than 200 pounds or in the high temperature side of a cascade system.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix Y to 40 CFR part 82, subpart G. The proposed regulatory text contains listing decisions for the end-use discussed above. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition, or Department of Transportation requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from cold storage warehouses are likely to be hazardous waste under RCRA (see 40 CFR parts 260 through 270).

1. Background on Cold Storage Warehouses

Cold storage warehouses, an end-use within the SNAP program, are refrigerated warehousing and are used to preserve meat, produce, dairy products, and other perishable goods prior to their distribution and sale.

Refrigerant choices depend on the refrigerant charge, ambient temperatures and the temperature required, system performance, energy efficiency, and health, safety and environmental considerations, among other things. The majority of cold storage warehouses in the United States use ammonia as the refrigerant in a vapor compression cycle, although some rely on other refrigerants. In addition to regulations pursuant to the SNAP program, other federal or local regulations may also affect refrigerant choice. For instance, regulations from OSHA may restrict or place requirements on the use of some refrigerants, such as ammonia (R–717). Building codes from local and state agencies may also incorporate limits on the charge size of particular refrigerants. EPA understands that this type of equipment falls under the scope of UL 60335–2–89, ''Household and Similar Electrical Appliances—Safety—Part 2–89: Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor.''

EPA is proposing to list HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, in new cold storage warehouses.

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE 34–2022 categorizes the refrigerants proposed for cold storage warehouses in this section as being in the A2L Safety Group. See section II.A.2 for further discussion on ASHRAE classifications of these refrigerants.

3. What are HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A and how do they compare to other refrigerants in the same end-use?

See section II.A.3 for further discussion on the environmental, flammability, toxicity, and exposure information for HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A.[58]

Redacted submissions and supporting documentation for HFO–1234yf, HFO–1234ze(E), and the refrigerant blends are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed risk screening assessments to examine the health and environmental risks of each of these substitutes. These risk screens are available in the docket for this proposed rule.[59] [60] [61] [62] [63] [64] [65]

Comparison to other substitutes in this end-use: HFO–1234yf, HFO–1234ze(E), and R–454A, R–454C, R–455A, R–457A, and R–516A all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in this end-use, such as ammonia with an ODP of zero and HCFO–1233zd(E) with an ODP less than 0.0004.

HFO–1234yf and HFO–1234ze(E) have GWPs less than four and less than six, respectively, comparable to that of (HCFO)–1233zd(E), CO_2, and ammonia with GWPs of 3.7, one, and zero respectively. R–454A, R–454C, R–455A, R–457A, and R–516A have GWPs ranging from 140 to 270, higher than some of the acceptable substitutes for new cold storage warehouses, including HCFO–1233zd(E), CO_2, and ammonia with GWPs of 3.7, one, and zero, respectively, and lower than those of other acceptable substitutes such as R–450A, R–513A, and R–407F with GWPs of about 600, 630, and 1,820, respectively.

Information regarding the toxicity of other available alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/*

[58] EPA previously listed HFO–1234yf as acceptable, subject to use conditions, in motor vehicle AC in light-duty vehicles (74 FR 53445, October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778, December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276, May 4, 2022). EPA previously listed R–454A, R–454C, and R–457A as acceptable subject to use conditions as substitutes in residential and light commercial AC and HPs (86 FR 24444, May 6, 2021).

[59] ICF, 2023s. Op. cit.

[60] ICF, 2023t. Op. cit.

[61] ICF, 2023u. Op. cit.

[62] ICF, 2023w. Op. cit.

[63] ICF, 2023x. Op. cit.

[64] ICF, 2023y. Op. cit.

[65] ICF, 2023z. Op. cit.

substitutes-cold-storage-warehouses). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit of HFO–1234yf, HFO–1234ze(E), and the refrigerant blends in these end-uses, are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFO–1234ze(E), and the refrigerant blends in commercial refrigeration are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the proposed refrigerants can be minimized by use consistent with ASHRAE 15–2022 and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The flammability risks with HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A in this end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced above. In conclusion, while these refrigerants may pose greater flammability risk than other available, non-flammable substitutes in the same end-use, this risk can be minimized by use consistent with ASHRAE 15–2022 and other industry standards such as UL 60335–2–89—which is required by our proposed use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in this end-use.

The proposed refrigerants provide additional lower-GWP options for situations where other refrigerants with lower GWPs are not viable, such as for use of ammonia in systems with remote compressors or in locations where local regulations restrict its use, or where a lower pressure refrigerant like HCFO–1233zd(E) is not technically viable. Not all refrigerants listed as acceptable under SNAP will be suitable for the range of equipment in the cold storage warehouse end-use. To provide additional options to ensure the availability of substitutes for the full range of cold storage warehouses with lower GWP and, therefore, lower overall risk to human health and the environment, EPA is proposing the listings for HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in all types of cold storage warehouses. In addition, to account for the additional challenges for finding lower GWP refrigerants for cold storage warehouses with moderate charge sizes and for cascade systems, EPA is proposing to list R–454A as acceptable, subject to use conditions, for use in cold storage warehouses with a charge size capacity less than 200 pounds or for use in the high-temperature side of a cascade system.

4. Why is EPA proposing these specific use conditions?

The proposed use conditions identified in the proposed listings above are explained in section II.H.1.

This proposal applies to end-uses covered by UL 60335–2–89, including the SNAP cold storage warehouses end-use. In addition, ASHRAE 15–2022 applies to these refrigeration systems.

The standard UL 60335–2–89 discussed in section II.H indicates that refrigerant charges greater than a specific amount (called ''m_3'' in the standard and based on the refrigerant's LFL) are beyond its scope and that national standards might apply, such as ASHRAE 15–2022. Hence, EPA is proposing to require adherence to both standards as use conditions for cold storage warehouses, broadening the coverage under this proposed rule.

EPA is proposing to incorporate by reference ASHRAE 15–2022, including all addenda published by the date of this proposal, in use conditions that apply to use of the proposed A2L refrigerants in new cold storage warehouses. Where the requirements specified in this proposed rule (if finalized) and ASHRAE 15–2022 differ, the requirements of this rule would apply.

EPA recognizes that ASHRAE 15–2022 is undergoing continuous maintenance with publication of periodic addenda and is typically updated and republished every three years. While this proposed rule incorporates all addenda to ASHRAE 15–2022 published by the date of this proposal, there may be additional changes by the time EPA issues a final rule based upon this proposal. However, given EPA would not have reviewed and proposed use conditions based on those changes, EPA is not proposing to include addenda or other changes made to ASHRAE 15–2022 after the date of the proposed rule.

EPA is proposing to list R–454A as acceptable, subject to use conditions, in cold storage warehouses with a use condition that this substitute may only be used either in equipment with a refrigerant charge capacity less than 200 pounds or in the high-temperature side of a cascade system. The Agency is proposing this use condition to allow use of R–454A less broadly than for the other refrigerants proposed for use in cold storage warehouses because its GWP is higher than those of the other proposed listings for this end-use (about 240, compared to less than four to 150). EPA's understanding is that there are two particular situations where use of refrigerants could be more constrained, and thus, additional refrigerant options may be helpful. The first of those situations is in what the industry standard ASHRAE 15–2022 identifies as a refrigerating system having a ''high probability'' that leaked refrigerant from a failed connection, seal, or component could enter an occupied area. An example of such a constraint is that ASHRAE 15–2022 and UL 60335–2–89 effectively set charge limits for A2L refrigerants to less than 200 pounds for applications inside occupied areas. In contrast, larger charge sizes could be used in ''low-probability'' locations where people are unlikely to come in contact with the refrigerant, such as systems used outdoors or in a machinery room with access restricted to employees. Where people are unlikely to come into contact with any leaked refrigerant, such as where charge sizes of 200 pounds or more of A2L refrigerant would be allowed under the use conditions incorporating UL 60335–2–89 and ASHRAE 15–2022, there would be fewer space constraints and greater flexibility in equipment design, so refrigeration system designers can accommodate a narrower set of substitutes. Conversely, where people are more likely to come into contact with any leaked refrigerant in an interior space, refrigerant charge capacities of a system would be less than 200 pounds; there would be more space constraints, less flexibility in equipment design, and potentially stricter code requirements, leading to a need for more refrigerant options. Allowing the additional option of R–454A for cold storage warehouses with smaller refrigerant charges would enable the use of a wider set of available substitutes to manage safety (in particular, flammability and toxicity), as well as allowing more options to achieve adequate performance where there may be more constraints. Therefore, EPA is proposing to list R–454A as acceptable, subject to use conditions, only for cold storage warehouses with a refrigerant charge capacity less than 200 pounds.

EPA is also proposing to list R–454A as acceptable, subject to use conditions, for use in the high temperature side of cascade systems used for cold storage

warehouses. As discussed above in section II.A.1, ''Background on retail food refrigeration,'' each system of a cascade system uses a different refrigerant that is most suitable for the given temperature range. Higher temperature systems, or the ''high temperature side,'' have typically used HFCs as a refrigerant; however, it is technologically achievable and has become more common to use ammonia in the high temperature side. For lower temperature systems, or the ''low temperature side'' of the cascade system, low boiling refrigerants such as R–744 can be used. Considerations for the choice of refrigerant on the high or low temperature side of cascade systems are influenced by many factors including, but not limited to, a refrigerant's toxicity and flammability, its temperature glide, and its suitability to lower temperature applications. EPA understands that use of flammable or toxic refrigerants, such as ammonia, on the high temperature side of a cascade may be limited in certain circumstances (*e.g.,* based on building codes and/or standards). EPA notes that there are a number of substitutes available for the low temperature side of the cascade system with GWPs lower than that of R–454A. Therefore, instead of proposing to list R–454A as acceptable, subject to narrowed use limits and subject to use conditions, EPA is proposing to list R–454A as acceptable, subject to use conditions, when it is used in the high temperature side of cascade systems; this would expand the refrigerant options that can comply with local building codes and industry safety standards while meeting the more challenging application of the high temperature side of a cascade system.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed decision to list HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, in new cold storage warehouses as discussed in this section II.F. EPA seeks comment on the risk mitigation offered by the proposed use conditions, including requiring compliance with the 2nd edition of UL 60335–2–89 under the SNAP program, except to the extent the proposed rule conflicts with the UL Standard, in which case we propose that the use conditions specified in the rule would apply. The Agency takes comment on our proposal to limit R–454A to use either in equipment with a refrigerant charge capacity less than 200 pounds or in the high temperature side of a cascade system. We also request comment on whether EPA should consider other use conditions to further mitigate potential risk from refrigerants. EPA requests comment on whether cold storage warehouses have been designed for or manufactured with the refrigerants proposed and any information on the safety of such equipment in other countries, and if and how such experience would translate to safe use in the United States.

G. Ice Skating Rinks—Proposed Listing of HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as Acceptable, Subject to Use Conditions, for Use in New Ice Skating Rinks With a Remote Compressor

EPA is proposing to list HFO–1234yf, HFO–1234ze(E), and the refrigerant blends R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new ice skating rinks.

Several use conditions proposed for ice skating rinks with a remote compressor are common to those proposed for other end-uses. Because of this similarity, EPA discusses the use conditions that would apply to all five end-uses in section II.H. For ice skating rinks with remote compressors, those are the only use conditions EPA is proposing. In summary, the common use conditions proposed include the following: restricting the use of each refrigerant to new equipment that is specifically designed for that refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards.

The regulatory text of the proposed decisions appears in tables at the end of this document. If finalized as proposed, this text would be codified in appendix Y to 40 CFR part 82, subpart G. EPA notes that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of the proposed refrigerants that are not included in the information listed in the tables (*e.g.,* the CAA section 608(c)(2) venting prohibition, or DOT requirements for transport of flammable gases). Flammable refrigerants being recovered or otherwise disposed of from ice skating rinks are likely to be hazardous waste under RCRA (see 40 CFR parts 260 through 270).

1. Background on Ice Skating Rinks

Ice skating rinks, an end-use within the SNAP program, are used by the general public for recreational purposes and also include professional rinks. These systems frequently use secondary loop refrigeration systems, where a primary loop containing a refrigerant uses a remote compressor that is in a location away from the public, such as a machinery room, and a secondary loop, containing propylene glycol, water, or another innocuous fluid, is used to directly cool the ice. Other types of refrigeration systems for ice skating rinks use a direct heat exchange system, where the refrigerant moves directly under the rink. The proposed listings would apply only to ice skating rinks that have a remote compressor.

Refrigerant choice depends on the refrigerant charge; ambient temperatures and the temperature required; system performance; energy efficiency; and health, safety, and environmental considerations, among other things. In addition to regulations pursuant to the SNAP program, other federal or local regulations may also affect refrigerant choice. For instance, regulations from OSHA may restrict or place requirements on the use of some refrigerants, such as ammonia (R–717). Building codes from local and state agencies may also incorporate limits on the amount of particular refrigerants used. Acceptable substitutes in use today for new ice skating rinks include ammonia, CO_2, HCFO–1233zd(E) as well as HFCs and HFC/HFO blends. These can be used alone or in combination with other refrigerants in other parts of the equipment, depending on the equipment and its design (*e.g.,* a secondary loop contains one refrigerant while the primary loop contains a different refrigerant). This type of equipment falls under the scope of UL 60335–2–89, ''Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or

Remote Refrigerant Unit or Motor-Compressor.''

2. What are the ASHRAE classifications for refrigerant flammability?

ASHRAE Standard 34–2022 categorizes the refrigerants proposed for ice skating rinks in this section as being in the A2L Safety Group. See section II.A.2 for further discussion on ASHRAE classifications of these refrigerants.

3. What are HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A and how do they compare to other refrigerants in the same end-use?

See section II.A.3 for further discussion on the environmental, flammability, toxicity, and exposure information for these refrigerants.[66]

Redacted submissions and supporting documentation for HFO–1234yf, HFO–1234ze(E) and the blends R–454C, R–455A, R–457A and R–516A are provided in the docket for this proposed rule (EPA–HQ–OAR–2023–0043) at *https://www.regulations.gov.* EPA performed a risk screening assessment to examine the health and environmental risks of each of these substitutes. These risk screens are available in the docket for this proposed rule.[67] [68] [69] [70] [71] [72]

Comparison to other substitutes in this end-use: HFO–1234yf, HFO–1234ze(E) and R–454C, R–455A, R–457A, and R–516A all have an ODP of zero, comparable to or lower than some of the acceptable substitutes in this end-use, such as ammonia with an ODP of zero and HCFO–1233zd(E) with an ODP of less than 0.0004.

HFO–1234yf and HFO–1234ze(E) have GWPs of less than four and less than six, respectively, comparable to or lower than that of other acceptable substitutes for new ice skating rinks, such as ammonia, CO_2, and HCFO–1233zd(E) with GWPs of zero, one, and 3.7, respectively.

R–454C, R–455A, R–457A, and R–516A have GWPs, ranging from about 140 to 150, which are higher than that of other acceptable substitutes for ice skating rinks, including ammonia, CO_2, and HCFO–1233zd(E) with GWPs of zero, one, and 3.7, respectively. The GWPs of HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A are lower than some of the acceptable substitutes for new ice skating rinks, such as R–450A, R–449A, and R–507A with GWPs of approximately 600, 1,400, and 3,990, respectively.

Information regarding the toxicity of other available alternatives is provided in the listing decisions previously made (see *https://www.epa.gov/snap/substitutes-ice-skating-rinks*). Toxicity risks of use, determined by the likelihood of exceeding the exposure limit of HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A in these end-uses, are evaluated in the risk screens referenced above. The toxicity risks of using HFO–1234yf, HFO–1234ze(E), and R–454C, R–455A, R–457A and R–516A in ice skating rinks with remote compressors are comparable to or lower than toxicity risks of other available substitutes in the same end-use. Toxicity risks of the proposed refrigerants can be minimized by use consistent with ASHRAE 15–2022—which would be required by our proposed use conditions—and other industry standards, recommendations in the manufacturers' SDS, and other safety precautions common in the refrigeration and AC industry.

The potential flammability risks of HFO–1234yf, HFO–1234ze(E) R–454C, R–455A, R–457A, and R–516A in this end-use, determined by the likelihood of exceeding their respective lower flammability limits, are evaluated in the risk screens referenced above. In conclusion, while these refrigerants may pose greater flammability risk than other available substitutes in the same end-use, this risk can be minimized by use consistent with ASHRAE 15–2022 and other industry standards such as UL 60335–2–89—which is required by our proposed use conditions—as well as recommendations in the manufacturers' SDS and other safety precautions common in the refrigeration and AC industry. EPA is proposing use conditions to reduce the potential risk associated with the flammability of these alternatives so that they will not pose significantly greater risk than other acceptable substitutes in this end-use. In addition, EPA is proposing to limit these listings to equipment with a remote compressor. Such equipment reduces the chances of exposure to the general public compared to refrigerants that are piped directly under an ice skating rink. This also can reduce the amount of refrigerant used, potentially reducing climate impacts of any refrigerant released.

In addition, the proposed substitutes have lower GWPs than most other available alternatives for the same end-use. The proposed refrigerants may provide additional lower-GWP options for situations where other refrigerants with lower GWPs are not viable, such as in locations where local regulations restrict use of ammonia. Not all refrigerants listed as acceptable under SNAP will be suitable for the range of equipment in the ice skating rinks end-use. To provide additional options to ensure the availability of substitutes with lower GWP for more ice skating rinks and, therefore, lower overall risk to human health and the environment, EPA is proposing the listings for HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new ice skating rinks.

4. Why is EPA proposing these specific use conditions?

The use conditions identified in the proposed listings above are explained in section II.H.1.

This proposal applies to end-uses covered by UL 60335–2–89, including the SNAP ice skating rinks end-use. In addition, ASHRAE 15–2022 applies to these refrigeration systems.

The standard UL 60335–2–89 discussed in section II.H indicates that refrigerant charges greater than a specific amount (called ''m_3'' in the standard and based on the refrigerant's LFL) are beyond its scope and that national standards might apply, such as ASHRAE 15–2022. Hence, EPA is proposing to require adherence to both standards as use conditions for ice skating rinks, broadening the coverage under this proposed rule.

EPA is proposing to incorporate by reference ASHRAE 15–2022, including all addenda published by the date of this proposal, in use conditions that apply to use of the proposed A2L refrigerants in new ice skating rinks. Where the requirements specified in this proposed rule (if finalized) and ASHRAE 15–2022 differ, the requirements of this rule would apply.

EPA recognizes that ASHRAE 15–2022 is undergoing continuous maintenance with publication of periodic addenda and is typically updated and republished every three years. While this proposed rule incorporates all addenda to ASHRAE 15–2022 published by the date of this proposal, there may be additional changes by the time EPA issues a final rule based upon this proposal. However, given EPA would not have reviewed

[66] EPA previously listed HFO–1234yf as acceptable, subject to use conditions, in motor vehicle AC in light-duty vehicles (74 FR 53445, October 19, 2009), in heavy-duty pickup trucks and complete heavy-duty vans (81 FR 86778, December 1, 2016) and in nonroad vehicles and service fittings for small refrigerant cans (87 FR 26276, May 4, 2022). EPA previously listed R–454C, and R–457A as acceptable, subject to use conditions, as substitutes in residential and light commercial AC and HPs (86 FR 24444, May 6, 2021).

[67] ICF, 2023s. Op. cit.

[68] ICF, 2023t. Op. cit.

[69] ICF, 2023w. Op. cit.

[70] ICF, 2023x. Op. cit.

[71] ICF, 2023y. Op. cit.

[72] ICF, 2023z. Op. cit.

and proposed use conditions based on those changes, EPA is not proposing to include addenda or other changes made to ASHRAE 15–2022 after the date of the proposed rule.

EPA is proposing a use condition that the six A2L refrigerants may only be used in new equipment that includes a remote compressor. This is intended to ensure that these flammable refrigerants, which are likely to use large charge sizes, are only used in situations where the refrigerant is removed from the presence of ice skaters and other members of the general public. This would reduce the likelihood of exposure or leaks of the refrigerant near the general public and instead allow facility employees and trained technicians to control access to the refrigerant.

5. What additional information is EPA including in these proposed listings?

EPA is providing additional information related to these proposed listings. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. See section II.H.2 for further discussion on what additional information EPA is including in these proposed listings. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

6. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of this proposed decision to list HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, in new ice skating rinks with a remote compressor as discussed in this section II.G. We request comment on our initial evaluation and our proposal to find HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A acceptable, subject to use conditions, for use in new ice skating rinks. EPA seeks comment on the risk mitigation offered by the proposed use conditions, including requiring compliance with the 2nd edition of UL 60335–2–89, except to the extent the proposed rule conflicts with the UL Standard, in which case we propose that the use conditions specified in the rule would apply. We also request comment on whether EPA should consider other use conditions to further mitigate potential risk from refrigerants. EPA requests comment on whether equipment for such ice skating rinks with remote compressors in the United States has already been designed or manufactured for the refrigerants proposed and any information on the safety of such equipment in other countries, and if and how such experience would translate to safe use in the United States. The Agency also requests comment on whether these listings should be restricted to ice skating rinks with a remote compressor, if they should be allowed for any ice skating rink, or if they should be limited to a different subset of ice skating rinks (*e.g.,* for use only in the primary loop of a secondary loop systems).

H. Use Conditions and Further Information for Retail Food Refrigeration, Commercial Ice Machines, Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks With a Remote Compressor

1. What use conditions is EPA proposing and why?

As described above, EPA is proposing to list:

- HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new equipment in stand-alone units, remote condensing units, supermarket systems, and refrigerated food processing and dispensing equipment;
- R–454A as acceptable, subject to use conditions, for use in new equipment in remote condensing units and supermarket systems;
- R–290 as acceptable, subject to use conditions, for use in new refrigerated food processing and dispensing equipment;
- HFC–32, HFO–1234yf, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new commercial ice machines;
- HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for used in new IPR equipment and HFC–32 and R–454B, for use in new chillers for IPR;
- HFO–1234yf, HFO–1234ze(E), R–454A, R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new cold storage warehouses; and
- HFO–1234yf, HFO–1234ze(E), R–454C, R–455A, R–457A, and R–516A as acceptable, subject to use conditions, for use in new ice skating rinks with remote compressors.

In addition, EPA is proposing to update the use conditions that apply to the existing listings of:

- R–290 as acceptable, subject to use conditions, for use in new retail food refrigeration stand-alone units; and
- R–290 as acceptable, subject to use conditions, for use in new self-contained commercial ice machines.

These use conditions are summarized in the listings under preamble units II.A, II.C, II.E, II.F, and II.G, and the revisions to the use conditions are summarized under preamble units II.B and II.D and are explained here in greater detail. The proposed use conditions (either as new listings or revisions to an existing listing) include restricting the use of each refrigerant to new equipment that is specifically designed for the refrigerant; use consistent with the 2nd edition of UL 60335–2–89, including testing, charge sizes, ventilation, usage space requirements, and certain hazard warnings and markings; and requirements for warning labels and markings on equipment to inform consumers, technicians, and first responders of potential flammability hazards. The specific use conditions are intended to allow for the use of these flammable refrigerants in a manner that will ensure they do not pose a greater overall risk to human health and the environment than other substitutes in these end-uses.

New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is proposing that these refrigerants may be used only in new equipment which has been designed to address concerns unique to flammable refrigerants—*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment. EPA is unaware of information on how to address hazards if these flammable refrigerants were to be used in equipment that was designed for non-flammable refrigerants. Given the flammable nature of these refrigerants, the fact that EPA is unaware of information to assess the risk if such retrofits were allowed, and because the refrigerants were not submitted to the SNAP program for retrofits, EPA has not reviewed them for retrofit applications for this proposal and is only proposing that they may be used in new equipment which can be properly designed for their use. This proposed use condition would not affect the ability to service a system using one of these refrigerants once installed, including the adding of refrigerant or replacing components.

Standards

To ensure safe use of the proposed flammable refrigerants, EPA is

proposing to incorporate by reference certain industry consensus safety standards in a use condition. Specifically, the Agency is proposing that the flammable refrigerants may be used only in equipment that meets all requirements in the 2nd edition of UL 60335–2–89.

Currently, new stand-alone units using R–290 are subject to a use condition to meet the requirements of Appendix SB of the 10th edition of the standard UL 471. If this rule becomes final as proposed, stand-alone units using R–290 manufactured before the effective date could continue to be used under SNAP and would remain in compliance with the SNAP use conditions as long as they met the applicable use conditions when they were manufactured. EPA is proposing that new stand-alone units using R–290 manufactured from the effective date of the final rule through September 29, 2024, must meet the requirements of either Appendix SB of the 10th edition of UL 471 or the 2nd edition of UL 60335–2–89. The Agency is also proposing that new stand-alone units using R–290 that are manufactured on or after September 30, 2024, must meet the requirements of the 2nd edition of UL 60335–2–89, rather than the earlier UL standards.

Currently, new self-contained commercial ice machines using R–290 must meet the requirements of Appendix SA of the 8th edition of UL 563. If this rule becomes final as proposed, commercial ice machines using R–290 manufactured before the effective date of a final rule could continue to be used under SNAP and would remain in compliance with the SNAP use conditions as long as they met the applicable use conditions when they were manufactured. EPA is proposing that new self-contained commercial ice machines using R–290 that are manufactured from the effective date of the final rule through September 29, 2024, must meet the requirements of either Appendix SA of the 8th edition of UL 563 or the 2nd edition of UL 60335–2–89. The Agency is also proposing that new self-contained commercial ice machines using R–290 that are manufactured on or after September 30, 2024, must meet the requirements of the 2nd edition of UL 60335–2–89, rather than the earlier UL standards.

UL 60335–2–89 includes requirements for construction and system design, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched. UL 60335–2–89 was developed in an open and consensus-based approach, with the assistance of experts in the AC and refrigeration industry as well as experts involved in assessing the safety of products. Those participating in the UL 60335–2–89 consensus standards process have tested equipment for flammability risk and evaluated the relevant scientific studies. While similar standards exist from other bodies such as the International Electrotechnical Commission (IEC), we are proposing to rely on specific UL standards that are most applicable and recognized by the U.S. market. This approach is the same as that in our previous listing determinations for flammable refrigerants (*e.g.,* 76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021; and 87 FR 45508, July 28, 2022).

A summary of the requirements of UL 60335–2–89 as they affect the proposed refrigerants and end-uses is offered here for information only and does not provide a complete review of the requirements in this standard.

The requirements in UL 60335–2–89 reduce the risk to workers and consumers posed by flammable refrigerants. UL 60335–2–89 limits the amount of refrigerant allowed in each type of appliance based on several factors explained in that standard. The standard specifies requirements for installation space of an appliance (*e.g.,* room floor area) and/or ventilation or other requirements that are determined according to the refrigerant charge used in the appliance, the installation location, and the type of ventilation of the location or of the appliance. Annex DVU provides guidance on how to apply the requirements to allow for safe use of A2L refrigerants. The 2nd edition of UL 60335–2–89 contains provisions for safety mitigation when using larger charges of A2L refrigerants or when using A2L refrigerants in equipment with a remote compressor. These mitigation requirements were developed to ensure the safe use of flammable refrigerants over a range of appliances. In general, as larger charge sizes are used, more stringent mitigation measures are required. In certain applications, refrigerant detection systems (as described in Annex 101.DVP, *Refrigerant detection systems for A2L refrigerants*); mitigation means (as described in Annex 101.DVU, including air circulation, ventilation, shut off valves, etc.); and refrigerant sensors (as described in 101.DVP, *Refrigerant sensor for REFRIGERANT DETECTION SYSTEMS*) are required. Where air circulation (*i.e.,* fans) is required in accordance with Annex 101.DVU, it must be initiated by a separate refrigerant detection system either as part of the appliance or installed separately. In a room with no mechanical ventilation, Annex 101.DVU1.7 provides requirements for openings to rooms based on several factors, including the charge size and the room area. The minimum opening is intended to be sufficient so that natural ventilation would reduce the risk of using a flammable refrigerant. The standard also includes specific requirements covering construction, instruction manuals, allowable charge sizes, mechanical ventilation, safety alarms, and shut off valves for A2L refrigerants.

In addition to Annex 101.DVU, UL 60335–2–89 has a requirement for the maximum charge for an appliance using a flammable refrigerant, including A2L, A2, and A3 refrigerants. Additional requirements exist for charge sizes exceeding three times the LFL.

Systems with refrigerant charges exceeding certain amounts are outside the scope of UL 60335–2–89; however, national standards apply instead, namely, ASHRAE 15–2022. Specifically, if the refrigeration circuit with the greatest mass of an A2L refrigerant is more than 260 times the lower flammability limit (in kg/m^3), such equipment is outside the scope. For example, HFC–32 has an LFL of approximately 0.307 kg/m^3 (0.0192 lb/ft^3); therefore, equipment with charge sizes of a single circuit exceeding 79.82 kg (176.0 lb) would fall outside the scope of UL 60335–2–89. In such situations, the refrigerant would need to be used in outdoor equipment or in a machinery room and the installation would need to meet the requirements of ASHRAE 15–2022. For self-contained equipment using an A3 refrigerant, the maximum charge size is 13 times the LFL (500 g of R–290) for equipment that is open and contains no doors or drawers and eight times the LFL (300 g of R–290) for equipment with doors or drawers. EPA expects that many types of retail refrigeration equipment could exceed these charge thresholds and therefore is proposing that an additional safety standard, ASHRAE 15–2022, apply to commercial refrigeration equipment using A2L refrigerants, as discussed in section II.A. Certain key provisions of ASHRAE 15–2022 are described above in section II.A; that standard supplements, rather than replaces, UL 60335–2–89, by providing instructions for installation of equipment and requirements for situations beyond the scope of UL 60335–2–89, *e.g.,* for use in refrigeration

systems with large charge sizes in a machinery room or outdoors.

Warning Labels—Equipment With A2L Refrigerants

As a use condition or revision to existing use conditions, EPA is proposing to require labeling of refrigerating systems used in retail food refrigeration equipment, commercial ice machines, IPR equipment, cold storage warehouses, and ice skating rinks (''equipment'') containing the proposed lower flammability (A2L) refrigerants. The text of these labels can also be found in Annex 101.DVV of UL 60335–2–89. EPA is proposing that the following labels, or the equivalent, must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent:

1. On the outside of the unit: ''WARNING—Risk Of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''

2. On the outside of the equipment: ''WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used''

3. On the inside of the equipment near the compressor: ''WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must Be Followed''

4. For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations''

1. If the equipment is delivered packaged, this label shall be applied on the packaging

2. If the equipment is not delivered packaged, this label shall be applied on the outside of the appliance.

EPA expects that all stand-alone units, self-contained commercial ice machines, and self-contained refrigerated food processing and dispensing equipment would be packaged, and hence this label would be placed as stipulated in item 1 above. EPA expects that other types of commercial refrigeration equipment could be provided packaged or not, and this label would be placed as stipulated in item 1 or 2, respectively.

5. On indoor unit near the nameplate:

1. At the top of the marking: ''Minimum installation height, X m (W ft)''. This marking is only required if the similar marking is required by the 2nd edition of UL 60335–2–89. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

2. Immediately below 5.1. above or at the top of the marking if 5.1. is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2)''. The terms ''Y'' and ''Z'' shall be replaced by the numeric floor area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

6. For non-fixed equipment, including on the outside of the appliance: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.''

7. For fixed equipment that is ducted, near the nameplate: ''WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.''

Labeling requirements 1., 2., and 3. above apply to all refrigeration equipment; labeling requirement 4. applies only to self-contained equipment that is pre-charged by the manufacturer (*e.g.,* stand-alone units or self-contained commercial ice machines); labeling requirement 5. applies only to equipment with a remote compressor, also called a ''split'' or ''remote'' system (*e.g.,* remote condensing unit, supermarket system, or refrigerating system for an ice skating rink with a remote compressor). A piece of refrigeration equipment that may be moved from one location to another and is typically self-contained is referred to as ''non-fixed'' in labeling requirement 6. (*e.g.,* stand-alone units).

EPA notes that Annex 101.DVV of UL 60335–2–89 specifies that the labels must include text with a font size that is no less than 3.2 mm (⅛ inch) high for A2L refrigerants, while the Agency is proposing a larger, more visible font size of 6.4 mm (¼ inch). The Agency is concerned that it is difficult to see warning labels with the minimum lettering height requirement of ⅛ inch in UL 60335–2–89. Therefore, as in the requirements in our previous rules for use of A2L refrigerants in residential and light commercial air conditioning and heat pumps (80 FR 19453, April 10, 2015; 86 FR 24444, May 6, 2021), as well as our previous rules for HC refrigerants (76 FR 78832, December 20, 2011; 80 FR 19453, April 10, 2015; 81 FR 86778, December 1, 2016), EPA is proposing to require the minimum height for lettering must be ¼ inch as opposed to ⅛ inch. This would make it easier for technicians, consumers, retail storeowners, and first responders to view the warning labels.

Warning Labels—Equipment With A3 Refrigerants, Including R–290

As a proposed use condition for refrigerated food processing and dispensing equipment and a proposed revision to existing use conditions for stand-alone units and commercial ice machines, EPA is proposing to require labeling of such equipment containing R–290. The text of these labels can also be found in Annex 101.DVV of UL 60335–2–89. EPA is proposing that the following markings, or the equivalent, must be provided in letters no less than 6.4 mm (¼ inch) high and must be permanent:

1. On the outside of the unit: ''DANGER''—Risk Of Fire Or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing''.

2. On the outside of the equipment: ''WARNING—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used''.

3. On the inside of the equipment near the compressor: ''DANGER—Risk Of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must Be Followed''.

4. For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: ''DANGER—Risk of Fire or Explosion due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations''.

1. If the equipment is delivered packaged, this label shall be applied on the packaging.

2. If the equipment is not delivered packaged, this label shall be applied on the outside of the appliance.

EPA expects that all stand-alone units and self-contained commercial ice machines and self-contained refrigerated food processing and dispensing equipment would be packaged, and hence this label would be placed as stipulated in item 1 above. EPA expects that other types of commercial refrigeration equipment

could be provided packaged or not, and this label would be placed as stipulated in item 1 or 2, respectively.

5. On indoor unit near the nameplate:

1. At the top of the marking: ''Minimum installation height, X m (W ft)''. This marking is only required if the similar marking is required by the 2nd edition of UL 60335–2–89. The terms ''X'' and ''W'' shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

2. Immediately below 5.1. above or at the top of the marking if 5.1. is not required: ''Minimum room area (operating or storage), Y m^2 (Z ft^2)''. The terms ''Y'' and ''Z'' shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word ''and'' has been replaced by the opening parenthesis.

6. For non-fixed equipment, including on the outside of the appliance: ''WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition.''

7. For fixed equipment that is ducted, near the nameplate: ''WARNING—Risk of Fire or Explosion—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions.''

The text of the warning labels, above, is exactly the same as that required in UL 60335–2–89, with the exception of the label identified in 5., which is similar to that in UL 60335–2–89. The text for A3 refrigerants differs slightly from that for A2L refrigerants, sometimes using the word ''DANGER'' instead of ''WARNING,'' and sometimes referring to ''Risk of Fire or Explosion'' instead of ''Risk of Fire.'' For R–290 and other A3 refrigerants, UL 60335–2–89 requires the labels to be no less than 6.4 mm (¼ inch) high in the standard, the same as EPA is proposing in this action. As in the requirements in our previous rules for A3 refrigerants (*i.e.,* 76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; and 81 FR 86778, December 1, 2016), EPA is proposing that the minimum height for lettering be ¼ inch, which would make it easier for technicians, consumers, retail storeowners, first responders, and those disposing the appliance to view the warning labels.

Markings

EPA is proposing to require as a use condition that the refrigerants must be used in refrigerating equipment that has red, Pantone® Matching System (PMS) #185 or RAL 3020 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed. EPA has applied this same use condition in past actions for flammable refrigerants (76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 81 FR 86778, December 1, 2016; 86 FR 24444, May 6, 2021; and 87 FR 45508, July 28, 2022). Our understanding of UL 60335–2–89 is that red markings similar to those proposed are required by UL 60335–2–89 for all flammable refrigerants. EPA is proposing that such markings apply to the proposed listings for flammable refrigerants as well to establish a common, familiar, and standard means of identifying the use of a flammable refrigerant.

These red markings would help technicians immediately identify the use of a flammable refrigerant, thereby reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The AC and refrigeration industry currently uses red-colored hoses and piping as means for identifying the use of a flammable refrigerant based on previous SNAP listings. Likewise, distinguishing coloring has been used elsewhere to indicate an unusual and potentially dangerous situation, for example in the use of orange-insulated wires in hybrid electric vehicles. Currently in SNAP listings, color-coded hoses or pipes must be used for ethane, HFC–32, R–452B, R–454A, R–454B, R–454C, R–457A, R–600a, R–290, and R–441A in certain types of equipment where these are listed acceptable, subject to use conditions. All such tubing must be colored red PMS #185 or RAL 3020. The intent of this aspect of the proposal is to alert technicians and others that a flammable refrigerant is being used within a particular piece of equipment or appliance. Another goal is to provide adequate notification of the presence of flammable refrigerants for personnel disposing of appliances containing flammable refrigerants. As explained in SNAP Rule 19, one mechanism to distinguish hoses and pipes is to add a colored plastic sleeve or cap to the service tube (80 FR 19465, April 10, 2015). Other methods, such as a red-colored tape could be used. The colored plastic sleeve, cap, or tape would have to be forcibly removed to access the service tube and would have to be replaced if removed. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve, cap, or tape would be of the same red color (PMS #185 or RAL 3020) and could also be boldly marked with a graphic to indicate the refrigerant was flammable. This could be a cost-effective alternative to painting or dyeing the hose or pipe.

EPA is proposing the use of color-coded hoses or piping as a way for technicians and others to recognize that a flammable refrigerant is used in the equipment. This would be in addition to the proposed use of warning labels discussed above. EPA believes having two such warning methods is reasonable and consistent with other general industry practices. This approach is the same as that adopted in our previous rules on flammable refrigerants (*e.g.,* 76 FR 78832, December 20, 2011; 80 FR 19454, April 10, 2015; 86 FR 24444, May 6, 2021; and 87 FR 45508, July 28, 2022).

EPA also is proposing to add a new marking to be placed near the service port or other location where charging occurs; on the label on the outside of the unit; and either on the appliance packaging, if the refrigeration equipment is charged at the factory or on the nameplate or control panel for refrigeration equipment that is charged in place. These locations correspond with the locations for red markings and for the labels 1. and 4. mentioned above on the outside of the refrigerating unit, and either on the packaging, or on the nameplate or control panel. UL 60335–2–89 describes markings in section 7, including a triangular symbol with a white picture of a flame on a red background, similar in size and shape to that of the International Organisation for Standardisation (ISO) symbol 7000–W021, but with different coloration (Clause 7.6DV D1). EPA is proposing a new diamond symbol for ''Caution, risk of fire'' that would be used in addition to the red triangle in Clause 7.6DV D1 of UL 60335–2–89. The diamond symbol hazard category 1 flammable gases would need to be at least 15 mm (9/16 inches) high.

EPA understands that in consultation with different fire service groups, such as the International Association of Fire

Fighters, UL and its standard-setting committees have been considering appropriate symbols to alert first responders to the presence and potential hazards of flammable refrigerant. One symbol under consideration is an equal-sided diamond with a red outline and a flame symbol on a white background, together with the refrigerant class from ASHRAE 34–2022 (*e.g.,* A2L or A3) to be written in text not less than one-third of the height of the symbol. This symbol is included as the warning symbol for hazard category 1 flammable gases in the 9th edition of the GHS for communicating risks of chemicals.[73] This symbol for hazard category 1 flammable gases is included in the 4th edition of UL 60335–2–40 (December 2022), UL's most recent safety standard for air conditioning equipment, heat pumps, and humidifiers, and is being considered for adoption in the future 3rd edition of UL 60335–2–89. It is found in section 1.2 of Annex 1 of the 9th edition of the GHS. You may see the proposed symbol for hazard category 1 flammable gases in the docket for this rulemaking under the title, ''Proposed Flammability Hazard Symbol.''

EPA is proposing to add this symbol to ensure the adoption of a symbol for ''Caution, risk of fire'' that is likely to be recognized by first responders in the United States as well as internationally. The symbol ISO 7000–W021, used in other UL standards for refrigerating equipment, is a black flame symbol on a yellow triangle. U.S. organizations representing fire fighters have raised concerns about that symbol, since it could refer to a highly reactive oxidizer, rather than a flammable substance. This is relevant because first responders would take different actions for an oxidizer from those for a flammable substance. EPA is proposing to include the GHS diamond symbol for hazard category 1 flammable gases prior to UL's adoption of it in UL 60335–2–89 to provide an additional warning about flammability hazard that is more likely to be recognizable by first responders and internationally than the current symbol in UL 60335–2–89.

2. What additional information is EPA including in these proposed listings?

For retail food refrigeration, commercial ice machines, IPR, cold storage warehouses, and ice skating rinks with remote compressors, EPA is proposing to include recommendations, found in the ''Further Information'' column of the regulatory text at the end of this document, to protect personnel from the risks of using flammable refrigerants. Similar to our previous listings of flammable refrigerants, EPA is proposing to include information on the OSHA requirements at 29 CFR part 1910, proper ventilation, personal protective equipment, fire extinguishers, use of spark-proof tools and equipment designed for flammable refrigerants, and training. Since this additional information is not part of the regulatory decision under SNAP, these statements are not binding for use of the substitute under the SNAP program. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes.

3. On which topics is EPA specifically requesting comment?

EPA is requesting comment on all aspects of the proposed use conditions described above and the appropriateness for applying these use conditions to the listings for A2L refrigerants used in retail food refrigeration, commercial ice machines, IPR and chillers for IPR, cold storage warehouses, and ice skating rinks with remote compressors in sections II.A, II.C, II.E, II.F, and II.G, respectively.

EPA is requesting comment on all aspects of the proposed use conditions described above and the appropriateness for applying these use conditions to the listing for R–290 used in refrigerated food processing and the proposed revisions to the use conditions in existing listings for R–290 in stand-alone units and self-contained commercial ice machines in sections II.B and II.D.

EPA is requesting comment on the applicability of UL 60335–2–89 to commercial refrigeration equipment, including for which types of equipment and under which applications the standard applies. We likewise are requesting comment on the applicability of UL 60335–2–89 to commercial ice machines, IPR equipment, cold storage warehouses, and ice skating rinks with remote compressors.

Also, with regard to UL 60335–2–89, EPA is requesting comment on the status of the standard, the modifications that are being or have been incorporated in it, how those modifications would change the risk associated with the use of the proposed flammable refrigerants in these end-uses, and the appropriateness of adopting as a use condition the current (2nd) edition of this standard.

EPA is also requesting comment on requiring labeling, the height of the lettering, the proposed diamond symbol for hazard category 1 flammable gases, and the likelihood of labels remaining on a product throughout the lifecycle of the product, including its disposal.

I. Proposed Exemption for R–290 From the Venting Prohibition Under CAA Section 608 for Refrigerated Food Processing and Dispensing Equipment.

1. What is EPA's proposed determination regarding whether venting, releasing, or disposing of R–290 in refrigerated food processing and dispensing equipment would pose a threat to the environment?

As described in section I.A above, under section 608(c)(2) of the CAA, it is unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any substitute substance for a class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. Under section 608(c)(2), this prohibition applies to any substitute refrigerant unless the Administrator determines that such venting, releasing, or disposing does not pose a threat to the environment. As discussed in section II.B above, EPA is proposing to list the refrigerant substitute R–290 under the SNAP program as acceptable, subject to use conditions, in newly manufactured refrigerated food processing and dispensing equipment. EPA is also proposing to exempt R–290 in this end-use from the venting prohibition under CAA section 608(c)(2), on the basis of current evidence that the venting, release, or disposal of this substance in this end-use and subject to the use conditions in this proposed action does not pose a threat to the environment.

For purposes of CAA section 608(c)(2), EPA considers two factors in determining whether or not venting, release, or disposal of a refrigerant substitute during the maintenance, servicing, repairing, or disposing of appliances poses a threat to the environment. See 69 FR 11948, March 12, 2004; 79 FR 29682, May 23, 2014; 80 FR 19453, April 10, 2015; and 81 FR 86778, December 1, 2016. First, EPA analyzes the threat to the environment due to inherent characteristics of the

[73] GHS, 2021. GHS Pictogram for Hazard Category 1 Flammable Gases from Annex 1 to the 9th edition of the Global Harmonized System of Classification and Labelling of Chemicals, 2021. You may find the GHS document online at *https://unece.org/sites/default/files/2021-9/GHS_Rev9E_0.pdf* or from the United Nations Publications section at: *https://shop.un.org/books/global-harmon-syst-class-9-92280.*

refrigerant substitute, such as GWP or photochemical reactivity. Second, EPA determines whether and to what extent venting, release, or disposal actually takes place during the maintenance, servicing, repairing, or disposing of appliances, and to what extent such actions are controlled by other authorities, regulations, or practices. To the extent that such releases are adequately controlled by other authorities, EPA defers to those authorities.

Potential Environmental Impacts

EPA has evaluated the potential environmental impacts of releasing R–290 into the environment, a substitute that we are proposing to list under the SNAP program as acceptable, subject to use conditions, in refrigerated food processing and dispensing equipment. We assessed the potential impact of the release of R–290 on local air quality and its ability to decompose in the atmosphere to form ground-level ozone, its ODP, its GWP, and its potential impacts on ecosystems. We found that the sizes of these impacts were not large enough to pose a threat to the environment. R–290's ODP is zero and its GWP is approximately three. R–290 is highly volatile and typically evaporates or partitions to air, rather than contaminating surface waters. Thus, R–290's effects on aquatic life are expected to be small.

As to potential effects on local air quality, R–290 meets the definition of VOC under CAA regulations (see 40 CFR 51.100(s)) and is not excluded from that definition for the purpose of developing SIPs to attain and maintain the NAAQS. R–290's maximum incremental reactivity (MIR) of 0.56 g O_3/g R–290 is higher and more reactive than that of the compound ethane (MIR of 0.26 g O_3/g ethane), which EPA uses as a threshold to determine whether substances may have negligible photochemical reactivity in the lower atmosphere (troposphere). EPA performed air quality modeling on a number of scenarios to determine if emissions of HC refrigerants could have a significant impact on local air quality, particularly in certain cities with particularly difficult challenges in achieving attainment of the NAAQS for ground-level ozone. Based on the analysis and modeling results described in section II.B.3, EPA proposes to conclude that the release of R–290 from the refrigerated food processing and dispensing end-use, in addition to the HCs previously listed as acceptable, subject to use conditions, for their specific end-uses, is expected to have little impact on local air quality. In this regard, EPA found particularly noteworthy that even assuming 100 percent market penetration of R–290 and the other acceptable HCs in the acceptable end-uses, which is a conservative assumption, the highest impact for a single 8-hour average ozone concentration based on that analysis would be 0.05 ppb in Los Angeles, 0.008 in Houston, and 0.005 in Atlanta compared to the NAAQS at 70 ppb.[74]

In addition, when examining all HC substitute refrigerants in those uses for which UL currently has standards in place, for which the SNAP program has already listed the uses as acceptable, subject to use conditions, or for which the SNAP program is reviewing a submission, including those in this proposed action, we found that even if all the HC refrigerant substitutes in appliances in end-uses proposed to be listed acceptable, subject to use conditions, in this action and listed as acceptable in previous rules were to be emitted, there would be a worst-case impact of less than 0.15 ppb for ground-level ozone in the Los Angeles area.[75] The use conditions established in the prior SNAP listings limited the total amount of R–290 in each refrigerant circuit to 60 g or less (for water coolers) or 150 g or less (for other end-uses), depending on the end-use. Because R–290 is not listed as acceptable for use in all refrigerant uses, the total amount of R–290 that could be emitted in the end-uses evaluated is estimated at roughly ten percent of total refrigerant emissions, or less than 16,000 metric tons annually.[76] In comparison, total anthropogenic VOC emissions were estimated at 19.6 million metric tons in 2017.[77] Further, there are other substitute refrigerants that are not VOC that may also be used in these end-uses, so our analysis assuming complete market penetration of HCs is conservative.

EPA also has performed more recent air quality analysis, considering additional end-uses and refrigerants that have been listed acceptable more recently (*e.g.,* R–1150 in very low temperature refrigeration), looking out to 2040, and using updated models.[78] EPA found that the revised air quality models showed slightly greater impacts compared to our 2014 and 2016 analyses in all scenarios. For example, in the worst-case scenarios where the most reactive HC refrigerant, propylene, was used broadly across the refrigeration and AC industry, the worst-case increase in ground-level ozone was 8.62 ppb in Los Angeles in the 2020 analysis compared to 7.8 ppb in Los Angeles in an analysis in 2016 looking at the same scenario with the same refrigerant. Changes to the Community Multiscale Air Quality (CMAQ) model, more updated refrigerant emissions estimates from EPA's Vintaging Model, as well as the longer time-period considered, resulted in the changes. The 2016 analysis found that even assuming 100 percent market penetration of R–290 and the other acceptable HCs in the end-uses where they are already listed as acceptable, subject to use conditions, or were under review, which is a conservative assumption, the highest impact for a single 8-hour average ozone concentration based on the 2016 analysis would be 0.05 ppb in Los Angeles and less than 0.01 ppb in Houston and Atlanta.[79] Looking at the 2020 analysis, in the scenarios that estimated emissions assuming that HC refrigerants listed as acceptable, subject to use conditions, reached 100 percent market penetration, the worst-case increase in ground-level ozone in Los Angeles was 0.012 ppb, in Houston was 0.009 ppb, and in Atlanta was 0.006 ppb. Unlike the 2016 analysis, the 2020 analysis did not include modeling of propylene or the propylene blend R–443A in certain end-uses, as those refrigerants were listed as unacceptable in SNAP Rule 21 (81 FR 86778, December 1, 2016). The modeled changes to ground-level ozone levels were less than 0.017 percent of the NAAQS 8-hour ozone concentration of 70 ppb.[80] EPA considers this to further support the Agency's earlier conclusions in 2015 and 2016 that use of saturated HCs as refrigerants, including release of R–290, R–600a, and R–441A during repairing, maintaining, servicing, or disposing of appliances, would not result in a significant increase in ground-level ozone.

[74] ICF, 2016. Additional Follow-on Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. September, 2016.

[75] ICF, 2014a. Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. February 2014.

[76] Ibid.

[77] U.S. EPA, 2020. 2017 National Emissions Inventory Report. U.S. Environmental Protection Agency. Available online at *https://gispub.epa.gov/neireport/2017/.*

[78] ICF, 2020. Additional Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. May 2020. Updated models included VM IO file_v5.1_10.01.19 and CMAQ 5.2.1 with carbon bond 06 (CB06) mechanism, as cited in ICF, 2020.

[79] ICF, 2016. Additional Follow-on Assessment of the Potential Impact of Hydrocarbon Refrigerants on Ground Level Ozone Concentrations. September 2016.

[80] ICF, 2020. Op cit.

Considering our evaluation of these potential environmental impacts, EPA proposes to conclude that R–290 in the refrigerated food processing and dispensing end-use is not expected to pose a threat to the environment on the basis of the inherent characteristics of this substance and the limited quantities used in the relevant end-use.

Authorities, Controls, or Practices

EPA expects that existing authorities, controls, and/or practices will mitigate environmental risk from the release of R–290. Analyses performed for both this rule and the SNAP rules issued in 1994, 2011, 2015, 2016, and 2022 (59 FR 13044, March 17, 1994; 76 FR 38832, December 20, 2011; 80 FR 19453, April 10, 2015; and 81 FR 86778, December 1, 2016, respectively) indicate that existing regulatory requirements and industry practices limit and control the emission of R–290. As explained below, EPA proposes that the limits and controls under other authorities, regulations, or practices adequately control the release of and exposure to R–290 and mitigate risks from any possible release.

As mentioned above, the determination of whether venting, release, or disposal of a substitute refrigerant poses a threat to the environment includes considering whether such venting, release, or disposal is adequately controlled by other authorities, regulations, or practices. This information is another part of EPA's proposal that the venting, release, or disposal of R–290, in the specified end-use and subject to the use conditions in this proposed action, does not pose a threat to the environment.

Industry service practices and OSHA standards and guidelines that address HC refrigeration equipment include monitoring efforts, engineering controls, and operating procedures. OSHA requirements that apply during servicing include continuous monitoring of explosive gas concentrations and oxygen levels. In general, HC emissions from refrigeration systems are likely to be significantly smaller than those emanating from the industrial process and storage systems, which are controlled for safety reasons. In sections II.B.7, ''What updates to existing use conditions for stand-alone units is EPA proposing?'' and II.D.5, ''What updates to existing use conditions for commercial ice machines is EPA proposing?'' above in this document, we note that the amount of substitute refrigerant from a refrigerant loop is effectively limited to 500 g or 300 g in the end-uses proposed in this rule. This indicates that HC emissions from such uses are likely to be relatively small.

As discussed above in section II.B.3, ''What is R–290 and how does it compare to other refrigerants in the refrigerated food processing and dispensing equipment end-use category?'', EPA's SNAP program evaluated the flammability and toxicity risks from R–290 in the proposed new end-use in this rule. EPA is providing some of that information in this section as well, to provide information on the potential for leaks and exposure due to R–290.

R–290 is classified as an A3 refrigerant by ASHRAE 34–2022 and subsequent addenda, indicating that it has low toxicity and high flammability. R–290 has an LFL of 2.1 percent. To address flammability risks, this proposal provides recommendations for its safe use (see section II.H.2, ''What additional information is EPA including in these proposed listings?''). The SNAP program's analysis suggests that the proposed use conditions in this rule will mitigate flammability risks.

Like most refrigerants, at high concentrations HCs can displace oxygen and cause asphyxiation. Various industry and regulatory standards exist to address asphyxiation and toxicity risks. The SNAP program's analysis of asphyxiation and toxicity risks suggests that the proposed use conditions in this rule would mitigate asphyxiation and toxicity risks. Furthermore, it is the Agency's understanding that flammability risks and occupational exposures to HCs are adequately regulated by OSHA and building and fire codes at a local and national level.

The release and/or disposal of many refrigerant substitutes, including R–290, are controlled by other authorities including various standards and state and local building codes. The industry consensus safety standard UL 60335–2–89, which EPA is proposing to incorporate by reference in use conditions in the SNAP listing for R–290 in refrigerated food processing and dispensing equipment, is one of these standards, and industry also applies the standard ASHRAE 15. Code-making organizations, such as the International Code Council (ICC), are in the process of updating references to the most recent industry standards that address use of R–290 and other flammable refrigerants in the International Building Code (IBC). The specific editions of UL 60335–2–89 and ASHRAE 15–2022 are in the process of being adopted in the next version of the IBC; once the IBC adopts those standards, states and localities may adopt those revisions into their state or local building codes. To the extent that release during maintaining, repairing, servicing, or disposing of appliances is controlled by regulations and standards of other authorities, these practices and controls for the use of R–290 are sufficiently protective. These practices and controls mitigate the risk to the environment that may be posed by the venting, release, or disposal of R–290 during the maintaining, servicing, repairing, or disposing of appliances.

EPA is aware of equipment that can be used to recover HC refrigerants. While there are no relevant U.S. standards for such recovery equipment currently, to the extent that R–290 is recovered rather than vented in specific end-uses and equipment, EPA recommends the use of recovery equipment designed specifically for flammable refrigerants in accordance with applicable safe handling practices.

2. What is EPA's proposal regarding whether venting of R–290 from refrigerated food processing and dispensing equipment should be exempted from the venting prohibition under CAA section 608(c)(2)?

Consistent with the proposed listing under SNAP in this action, EPA proposes to determine that venting, releasing, or disposing of R–290 in refrigerated food processing and dispensing equipment is not expected to pose a threat to the environment during the maintaining, servicing, repairing, or disposing of appliances. As discussed more fully above, we propose this on the basis of the inherent characteristics of this substance, the limited quantities used in the relevant end-uses, and the limits and controls under other authorities, regulations, or practices that adequately control the release of and exposure to R–290 and mitigate risks from any possible release. Accordingly, EPA is proposing to revise the regulations at § 82.154(a)(1) to add R–290 in this end-use to the list of substitute refrigerants that are exempt from the venting prohibition under CAA section 608(c)(2).

3. When would the exemption from the venting prohibition apply?

We are proposing that this exemption for R–290 in refrigerated food processing and dispensing equipment would apply as of 30 days after the publication of a final rule in the **Federal Register**. This would be the same as the proposed effective date of the SNAP listing of R–290 in refrigerated food processing and dispensing equipment, if that listing is finalized as proposed.

4. What is the relationship between this proposed exemption under CAA section 608(c)(2) and other EPA rules?

If this proposed exemption were to become final as proposed, it would not mean that R–290 could be vented in all situations. R–290 and other HCs being recovered, vented, released, or otherwise disposed of from commercial and industrial appliances are likely to be hazardous waste under RCRA (see 40 CFR parts 260 through 270). As discussed in the final rules addressing the venting of ethane (R–170), R–600a, R–290, and R–441A as refrigerant substitutes in certain end-uses, incidental releases may occur during the maintenance, service, and repair of appliances subject to CAA section 608 (79 FR 29682, May 23, 2014; 80 FR 19454, April 10, 2015; 81 FR 86778, December 1, 2016). Such incidental releases would not be subject to RCRA requirements for the disposal of hazardous waste, as such releases would not constitute disposal of the refrigerant charge as a solid waste, *per se.* For commercial appliances such as refrigerated food processing and dispensing equipment, it is likely that R–290 and other flammable HC refrigerant substitutes would be classified as hazardous waste and recycling, reclamation or disposal of R–290 from such appliances would need to be managed as hazardous waste under the RCRA regulations (40 CFR parts 260 through 270), unless it is subject to a limited exception in those regulations if the ignitable refrigerant is to be reused without first being processed to remove contamination.

5. On which topics is EPA specifically requesting comment?

EPA requests comment on all aspects of our proposal to exempt R–290 used as a refrigerant substitute in refrigerated food processing and dispensing equipment from the venting prohibition under CAA section 608(c)(2), as well as seeking comment on the proposed addition to the existing exemption language for R–290 in particular end-uses at 40 CFR 82.154(a)(1)(viii). The Agency notes that the proposed regulatory text contains the proposed addition to § 82.154(a)(1)(viii), as well as certain other exemptions for other end-uses that already appear at 40 CFR 82.154(a)(1)(viii) and that EPA is republishing for purposes of formatting for the **Federal Register**. EPA is not proposing changes to, and is not taking comment on, those existing exemptions and we are not reopening for comment those current exemptions for the other end-uses where R–290 may be used.

III. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0226. The approved Information Collection Request includes five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a Toxic Substances Control Act (TSCA)/SNAP Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable, subject to use restrictions, and recordkeeping for small volume uses. This proposed rule contains no new requirements for reporting or recordkeeping.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this proposed rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. This action proposes to add the additional options under SNAP of using HFC–32, HFO–1234yf, HFO–1234ze(E), R–290, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A in the specified end-uses, but does not mandate such use. Because equipment for HFO–1234yf, HFO–1234ze(E), R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A is not manufactured yet in the U.S. for retail food refrigeration equipment, commercial ice machines, IPR, cold storage warehouses, and ice skating rinks, no change in business practice is required to meet the use conditions, resulting in no adverse impact compared with the absence of this proposed rule. The new use conditions for R–290 in stand-alone units and self-contained commercial ice machines were requested by industry and are consistent with the most recent, updated standard; these would allow for greater consistency in business practices for different types of equipment using the same refrigerant, as well as provide greater flexibility in designing and manufacturing equipment. Equipment for R–290 already manufactured prior to the effective date of a final rule based on this proposal would not be required to be changed. Stand-alone units and self-contained commercial ice machines using R–290 have been subject to similar use conditions, and thus the updated requirements would result in no adverse impact compared with the absence of this proposed rule. Thus, if the rule were finalized as proposed, it would not impose new costs on small entities. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other fora.

G. Executive Order 13045: Protection of Children From Environmental Health 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. While EPA has not conducted a separate analysis of risks to infants and children associated with this proposed rule, the rule does contain use conditions that would reduce exposure risks to the general population, with the reduction of exposure being most important to the most sensitive individuals. This action's health and risk assessments are contained in the comparisons of toxicity for the various substitutes, as well as in the risk screens for the substitutes that are listed in this proposed rule. The risk screens are in the docket for this rulemaking. However, EPA's *Policy on Children's Health* applies to this action.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

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

This action involves technical standards. EPA uses and proposes to incorporate by reference portions of the 2021 UL 60335–2–89, which establishes requirements for the evaluation of commercial refrigeration equipment and commercial ice machines and safe use of flammable refrigerants, among other things. This standard is discussed in greater detail in section II.H.1 of this preamble.

The 2021 standard UL 60335–2–89, ''Household And Similar Electrical Appliances—Safety—Part 2–89: Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor Compressor,'' 2nd edition, October 27, 2021, is available at: *https://www.shopulstandards.com/ProductDetail.aspx?productId=UL60335-2-89_2_S_20211027,* and may be purchased by mail at: COMM 2000, 151 Eastern Avenue, Bensenville, IL 60106; Email: *orders@shopulstandards.com;* Telephone: 1–888–853–3503 in the U.S. or Canada (other countries dial 1–415–352–2178); internet address: *https://ulstandards.ul.com* or *https://www.shopulstandards.com.* The cost of the 2021 standard UL 60335–2–89 is $519 for an electronic copy and $649 for a hard copy. UL also offers a subscription service to the Standards Certification Customer Library that allows unlimited access to their standards and related documents. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers and purchase is not necessary for those selling, installing, and servicing the equipment. Therefore, EPA concludes that the UL standard proposed to be incorporated by reference is reasonably available.

EPA is also proposing to incorporate by reference the GHS diamond symbol (pictogram) for hazard category 1 flammable gases from Annex 1 to the 9th edition of the Global Harmonized System of Classification and Labelling of Chemicals, copyrighted in 2021, in the use conditions for hazard labeling of commercial and industrial refrigeration equipment. This document is available for viewing online at: *https://unece.org/sites/default/files/2021-9/GHS_Rev9E_0.pdf.* Printed versions and electronic editable versions are available for sale at the United Nations Publications section at: *https://shop.un.org/books/global-harmon-syst-class-9-92280.* The cost of the 9th edition of the GHS is $75.00 for an electronic copy or $150.00 for a printed hard copy. A copyright permission request is not required for the use of up to 2 graphs, charges, tables, and figures. The cost of obtaining this standard is not a significant financial burden for equipment manufacturers or for those selling, installing, and servicing the equipment. Therefore, EPA concludes that the GHS symbol proposed to be incorporated by reference is reasonably available.

EPA is also proposing to incorporate by reference ANSI/ASHRAE Standard 15–2022, ''Safety Standard for Refrigeration Systems,'' in the use conditions for refrigerants listed for use in larger refrigeration equipment (see summary in section II.A.4 of the preamble) and ANSI/ASHRAE Standard 34–2022, ''Designation and Safety Classification of Refrigerants,'' in the use conditions for labeling refrigeration equipment with the safety classification of the refrigerant used (see summary in section II.A.2 of the preamble). These standards are available at *https://www.ashrae.org/technical-resources/bookstore/ashrae-refrigeration-resources,* and may be purchased by mail at: 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; by telephone: 1–800–527–4723 in the U.S. or Canada. ASHRAE 15–2022 and ASHRAE 34–2022 are available as a bundle costing $169.00 for an electronic copy or hard copy. The cost of obtaining these standards is not a significant financial burden for equipment manufacturers or for those selling, installing, and servicing the equipment. Therefore, EPA concludes that the ASHRAE standards proposed to be incorporated by reference are reasonably available.

The following standards are already approved for locations where they appear in the amendatory text: UL 471, UL 541, UL 484, UL 60335–2–24, and 60335–2–40.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or indigenous peoples. This action's health and environmental risk assessments are contained in the comparison of health and environmental risks for HFC–32, HFO–1234yf, HFO–1234ze(E), R–290, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A as well as in the risk screens that are available in the docket for this rulemaking. EPA's analysis indicates that other environmental impacts and human health impacts of HFC–32, HFO–1234yf, HFO–1234ze(E), R–290, R–454A, R–454B, R–454C, R–455A, R–457A, and R–516A are comparable to or less than those of other substitutes that are listed as acceptable for the same end-use. Because adoption of the new substitutes listed in this proposed rule is voluntary, the Agency is unable to quantify when, where, and

how much of the listed substitutes will be produced and used. Thus, EPA cannot determine the extent to which this proposed rule will exacerbate or reduce existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA believes that it is not practicable to assess whether this action is likely to result in new disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. The Agency will continue to evaluate the impacts of this program on communities with environmental justice concerns and consider further action, as appropriate.

IV. References

Unless specified otherwise, all documents are available electronically through the Federal Docket Management System at *regulations.gov,* Docket number EPA–HQ–OAR–2023–0043.

ASHRAE, 2022a. ANSI/ASHRAE Standard 15–2022: Safety Standard for Refrigeration Systems. 2022

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ICF, 2023b. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: HFO–1234ze(E) (Solstice® ze, Solstice® 1234ze).

ICF, 2023c. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–454A (Opteon® XL40).

ICF, 2023d. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–454C (Opteon™ XL20).

ICF, 2023e. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–455A (Solstice® L40X).

ICF, 2023f. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–457A (Forane® 457A).

ICF, 2023g. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: R–516A (Forane® 516A).

ICF, 2023h. Risk Screen on Substitutes in Retail Food Refrigeration (New Equipment); Substitute: Propane (R–290).

ICF, 2023i. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: HFC–32.

ICF, 2023j. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: HFO–1234yf.

ICF, 2023k. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454A (Opteon® XL40).

ICF, 2023l. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454B (Opteon® XL41).

ICF, 2023m. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–454C (Opteon™ XL20).

ICF, 2023n. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–455A (Solstice® L40X).

ICF, 2023o. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–457A (Forane® 457A).

ICF, 2023p. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: R–516A (Forane® 516A).

ICF, 2023q. Risk Screen on Substitutes in Commercial Ice Machines (New Equipment); Substitute: Propane (R–290).

ICF, 2023r. Risk Screen on Substitutes in Industrial Process Refrigeration (New Equipment); Substitute: HFC–32 (Difluoromethane)

ICF, 2023s. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: HFO–1234yf.

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ICF, 2023u. Risk Screen on Substitutes in Industrial Process Refrigeration and Cold Storage Warehouses (New Equipment); Substitute: R–454A (Opteon® XL40).

ICF, 2023v. Risk Screen on Substitutes in Industrial Process Refrigeration (New Equipment); Substitute: R–454B (Opteon® XL41).

ICF, 2023w. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–454C (Opteon™ XL20).

ICF, 2023x. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–455A (Solstice® L40X).

ICF, 2023y. Risk Screen on Substitutes in Industrial Process Refrigeration, Cold Storage Warehouses, and Ice Skating Rinks (New Equipment); Substitute: R–457A (Forane® 457A).

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UL 563, 2009. Standard for Safety: Ice Makers—Supplement SA: Requirements for Ice Makers Employing a Flammable Refrigerant in the Refrigerating System, 8th edition, July 31, 2009, including revisions through November 29, 2013.

UL 60335–2–89, 2021. Household And Similar Electrical Appliances—Safety—Part 2–89: Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor Compressor. 2nd edition. October 27, 2021.

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Stratospheric ozone layer.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Amend appendix R to subpart G of part 82 by:

■ a. Revising the heading; and

■ b. Revising the table titled ''Substitutes That Are Acceptable Subject to Use Conditions.''

The revisions read as follows:

Appendix R to Subpart G of Part 82—Substitutes Subject to Use Restrictions Listed in the December 20, 2011, Final Rule, Effective February 21, 2012, in the April 10, 2015, Final Rule, Effective May 11, 2015, in the April 28, 2023, Final Rule, Effective May 30, 2023, and in the [date of publication of the final rule], Final Rule, Effective [effective date of the final rule]

BILLING CODE 6560–50–P

Substitutes That Are Acceptable Subject to Use Conditions

End-use	Substitute	Decision	Use Conditions	Further Information
1. Household refrigerators, freezers, and combination refrigerators and freezers (New equipment only)	Isobutane (R-600a), Propane (R-290), R-441A	Acceptable subject to use conditions	As of September 7, 2018: These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for a different refrigerant). These refrigerants may be used only in a refrigerator or freezer, or combination refrigerator and freezer, that meets all requirements listed in UL 60335-2-24.[1,2,6]	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation), 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with these refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers

				containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.
2. Retail Food Refrigeration—stand-alone units only (New equipment only) manufactured on or after February 21, 2012, and up to but not including [effective date of final rule]	Isobutane (R-600a) Propane (R-290) R-441A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in equipment that meets all requirements in Supplement SB to UL 471.[1,2,3] In cases where this listing 2 includes requirements more stringent than those of UL 471, the appliance must meet the requirements of this listing 2 in place of the requirements in the UL Standard. The charge size for the retail food refrigerator or freezer shall not exceed 150 grams (5.3 ounces) in each circuit. As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1,2,3] the following markings shall be attached at the locations provided and shall be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used."	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigerators and freezers with propane. Recovery equipment designed for flammable refrigerants should be used. Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing this refrigerant. Technicians should

			(e) Near any and all exposed refrigerant tubing: "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings shall be in letters no less than 6.4 mm (1/4 inch) high. The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 or RAL 3020 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then stand-alone retail food refrigeration units using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.
3. Retail Food Refrigeration—stand-alone units only (New equipment only) manufactured from [effective date of final rule], through September 29, 2024	Isobutane (R-600a) Propane (R-290) R-441A	Acceptable subject to use conditions	These substitutes may only be used in equipment that meets all requirements of either: 1. Supplement SB to UL 471[1,2,3] and listing 2 of this table or 2. UL 60335-2-89[1,2,7] and listing 4 of this table.	
4. Retail Food Refrigeration—stand-alone units only (New equipment only) manufactured on or after September 30, 2024	Isobutane (R-600a) Propane (R-290) R-441A	Acceptable subject to use conditions	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., this substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This substitute may only be used in equipment that meets all requirements in UL 60335-2-89.[1,2,7] In cases where this listing 4 includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing.[7] The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment:	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per

			"DANGER —Risk of Fire Or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing" (b) On the outside of the equipment: "WARNING—Risk of Fire Or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "DANGER—Risk of Fire OR Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed" (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire Due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations." a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the indoor unit near the nameplate: a. At the top of the marking: "Minimum Installation height, X m (W ft)." This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335-2-89. Note that the formatting here is slightly different than UL 60335-2-89; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below a or at the top of the marking if a is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)." The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335-2-89. Note that the	29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment containing flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Any person commissioning, maintaining, repairing, decommissioning, and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 60355-2-89, 2^{nd} edition. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from ice machine

			formatting here is slightly different than UL 60335-2-89; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk Of Fire Or Explosion—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)[1,11,12] warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border) on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label	appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

			(d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,9,10] in letters at least one-third the height of the diamond symbol.	
5. Very low temperature refrigeration. Non-mechanical heat transfer (New equipment only)	Ethane (R-170)	Acceptable subject to use conditions	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., the substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This refrigerant may only be used in equipment that meets all requirements in Supplement SB to UL 471.[1,2,3] In cases where this listing 5 of this table includes requirements more stringent than those of UL 471, the appliance must meet the requirements of listing 5 of this table in place of the requirements in UL 471. The charge size for the equipment must not exceed 150 g (5.29 oz) in each circuit. As provided in clauses SB6.1.2 to SB6.1.5 of UL 471,[1,2,3] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER - Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER - Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel.	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling ethane. Special care should be taken to avoid contact with the skin since ethane, like many refrigerants, can cause freeze burns on the skin.

			Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION - Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION - Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION - Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (1/4 inch) high. The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 or RAL 3020 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing ethane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then refrigeration equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Example of non-mechanical heat transfer using this refrigerant would be use in a secondary loop of a thermosiphon.
6. Vending machines (New equipment only)	Isobutane (R-600a), Propane (R-290), R-441A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). Detaching and replacing the old refrigeration circuit from the outer casing of the equipment with a new one containing a new evaporator,	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000

			condenser, and refrigerant tubing within the old casing is considered "new" equipment and not a retrofit of the old, existing equipment. These substitutes may only be used in equipment that meets all requirements in Supplement SA to UL 541.[1,2,5] In cases where this listing 6 of this table includes requirements more stringent than those of UL 541, the appliance must meet the requirements of this listing 6 of this table in place of the requirements in UL 541 The charge size for vending machines must not exceed 150 g (5.29 oz) in each circuit. As provided in clauses SA6.1.2 to SA6.1.5 of UL 541,[1,2,5] the following markings must be attached at the locations provided and must be permanent: (a) On or near any evaporators that can be contacted by the consumer: "DANGER - Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) Near the machine compartment: "DANGER - Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) Near the machine compartment: "CAUTION - Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the exterior of the refrigerator: "CAUTION - Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) Near any and all exposed refrigerant tubing: "CAUTION - Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." All of these markings must be in letters no less than 6.4 mm (1/4 inch) high	(toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on refrigeration equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

			The refrigeration equipment must have red, Pantone® Matching System (PMS) #185 or RAL 3020 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	
7. Residential and light-commercial air conditioning and heat pumps—self-contained room air conditioners only (New equipment only)	HFC-32, Propane (R-290), R-441A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These refrigerants may only be used in equipment that meets all requirements in Supplement SA and Appendices B through F of UL 484.[1,2,4] In cases where listing 7 of this table includes requirements more stringent than those of UL 484, the appliance must meet the requirements of this listing 7 of this table in place of the requirements in UL 484. The charge size for the entire air conditioner must not exceed the maximum refrigerant mass determined according to Appendix F of UL 484 for the room size where the air conditioner is used. The charge size for these three refrigerants must in no case exceed 1,000 g (35.3 oz or 2.21 pounds) of propane or 1,000 g (35.3 oz or 2.21 pounds) of R-441A. For portable air conditioners, the charge size must in no case exceed 300 g (10.6 oz or 0.66 pounds) of propane or 330 g (11.6 oz or 0.72 pounds) of R-441A. The manufacturer must design a charge size for the entire air conditioner that does not exceed the amount specified for the unit's cooling capacity, as specified in table A, B, C, D, or E of this appendix. As provided in clauses SA6.1.2 to SA6.1.5 of UL 484,[1,2,4] the following markings must be	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling these refrigerants. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby.

			attached at the locations provided and must be permanent: (a) On the outside of the air conditioner: "DANGER- Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the air conditioner: "CAUTION - Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the air conditioner near the compressor: "CAUTION - Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) On the outside of each portable air conditioner: "WARNING: Appliance shall be installed, operated and stored in a room with a floor area larger the "X" m^2 (Y ft^2)." The value "X" on the label must be determined using the minimum room size in m^2 calculated using Appendix F of UL 484. For R-441A, use a lower flammability limit of 0.041 kg/m^3 in calculations in Appendix F of UL 484. All of these markings must be in letters no less than 6.4 mm (1/4 inch) high. The air conditioning equipment must have red, Pantone® Matching System (PMS) #185 or RAL 3020 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed.	Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service air conditioning equipment containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added then air conditioning equipment using this refrigerant should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Air conditioning equipment in this category includes window air conditioning units, portable room air conditioners, and packaged terminal air conditioners and heat pumps.

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, https://www.epa.gov/dockets, (202) 566-1742. For information on the availability of this material at NARA, visit https://www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov.

[2]You may obtain the UL material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; phone: 1–888–853–3503 in the U.S. or Canada (other countries +1–415–352–2168); email: orders@shopulstandards.com; website: https://ulstandards.ul.com/ or www.shopulstandards.com.

[3] UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. November 24, 2010.

[4] UL 484. Room Air Conditioners. 8th edition. Supplement SA: Requirements for Room Air Conditioners Employing a Flammable Refrigerant in the Refrigerating System and Appendices B through F. December 21, 2007, with changes through August 3, 2012.

[5] UL 541. Refrigerated Vending Machines. 7th edition. Supplement SA: Requirements for Refrigerated Venders Employing a Flammable Refrigerant in the Refrigerating System. December 30, 2011.

[6] UL 60335-2-24. Standard for Safety: Requirements for Household and Similar Electrical Appliances, - Safety - Part 2-24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers, Second edition, dated April 28, 2017.

[7] UL 60335-2-40, Standard for Safety: Household And Similar Electrical Appliances - Safety - Part 2- 40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers, 3rd edition, Dated November 1, 2019.

[8] UL 60335-2-89, Standard for Household and Similar Electrical Appliances - Safety - Part 2- 89: Particular Requirements for Commercial Refrigerating Appliances and Ice-Makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor, 2nd edition, Dated October 27, 2021.

[9] You may obtain the ASHRAE material from: American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; phone: 1-800-527-4723 or 1-404-636-8400 in the U.S. or Canada; email: cservice@ashrae.org; website: https://www.ashrae.org/technical-resources/bookstore/ashrae-refrigeration-resources.

[10] ANSI/ASHRAE Standard 34-2022. Designation and Safety Classification of Refrigerants. Copyright 2022.

[11] You may obtain the material from: https://unece.org/sites/default/files/2021-9/GHS_Rev9E_0.pdf or from the United Nations Publications section at: https://shop.un.org/books/global-harmon-syst-class-9-92280.

[12] GHS Pictogram for Hazard Category 1 Flammable Gases from Annex 1 to the 9th edition of the Global Harmonized System of Classification and Labelling of Chemicals, copyrighted 2021.

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■ 3. Amend appendix V to subpart G of part 82 by:

■ a. Revising the heading; and

■ b. Revising the table titled ''Refrigerants—Acceptable Subject to Use Conditions''.

The revisions read as follows:

Appendix V to Subpart G of Part 82—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the December 1, 2016, Final Rule, Effective January 3, 2017, and Listed in the [date of publication of the final rule], Final Rule, Effective [effective date of final rule]

Refrigerants—Acceptable Subject to Use Conditions

End-use	Substitute	Decision	Use Conditions	Further Information
1. Commercial ice machines (self-contained) (new only) manufactured from January 3, 2017, and up to but not including [effective date of final rule]	Propane (R-290)	Acceptable subject to use conditions	This refrigerant may be used only in new equipment designed specifically and clearly identified for the refrigerant--i.e., this refrigerant may not be used as a conversion or "retrofit" refrigerant for existing equipment. This refrigerant may be used only in self-contained commercial ice machines that meet all requirements listed in Supplement SA to UL 563.[1,2,5] In cases where this rule includes requirements more stringent than those in UL 563, the equipment must meet the requirements of the final rule in place of the requirements in the UL Standard. The charge size must not exceed 150 g (5.29 oz) in each refrigerant circuit of a commercial ice machine. As provided in clauses SA6.1.1 and SA6.1.2 of UL 563, the following markings must be attached at the locations provided and must be permanent: (a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." This marking must be provided on or near any evaporators that can be contacted by the consumer. (b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." This marking must be located near the machine compartment. (c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." This marking must be located near the machine compartment. (d) "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." This marking must be provided on the exterior of the refrigeration equipment. (e) "CAUTION—Risk of Fire or	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation), 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment with propane. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing propane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately

			Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." This marking must be provided near all exposed refrigerant tubing. All of these markings must be in letters no less than 6.4 mm (1/4 inch) high. The equipment must have red Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations.	following the accidental release of this refrigerant. If a service port is added then, commercial ice machines or equipment using propane should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit and should not be accessed with an adaptor.
2. Commercial ice machines (self-contained) (new only) manufactured on or after [effective date of final rule], through September 29, 2024	Propane (R-290)	Acceptable subject to use conditions	This refrigerant may be used only in self-contained commercial ice machines that meet all requirements in either: 1. Supplement SA to UL 563[1,2,5] and listing 1 of this table or 2. UL 60335-2-89[1,2,6] and listing 3 of this table.	
3. Commercial ice machines (self-contained) (new only) manufactured on or after September 30, 2024	Propane (R-290)	Acceptable subject to use conditions	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This substitute may only be used in commercial ice machines that meets all requirements in UL 60335-2-89.[1,2,6] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing 3 in place of the requirements in UL 60335-2-89. In cases where this listing 3 includes requirements different than those of ASHRAE 15-2022[1,7,8] the appliance would need to meet the requirements of this listing in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective

			shall apply unless superseded by this listing 3. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "DANGER—Risk of Fire Or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire OR Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "DANGER—Risk of Fire Or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "DANGER—Risk of Fire or Explosion due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On indoor units near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per UL 60335-2-89. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or	equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,5] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from ice machine appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

			at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per UL 60335-2-89. Note that the formatting here is slightly different than UL 60335-2-89; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the appliance: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire Or Explosion—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25 mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)[1,10,11] warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red	

			border) on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,7,9] in letters at least one-third the height of the diamond symbol.	
4. Very low temperature refrigeration equipment (new only)	Propane (R-290)	Acceptable subject to use conditions	As of January 3, 2017: This refrigerant may be used only in new equipment designed specifically and clearly identified for the refrigerant--i.e., this refrigerant may not be used as a conversion or "retrofit" refrigerant for existing equipment. This refrigerant may only be used in equipment that meets all requirements in Supplement SB to UL 471.[1,2,4] In cases where this listing 4 of this table includes requirements more stringent than those of UL 471, the appliance must meet the requirements of this listing 4 of this table in place of the requirements in UL 471. The charge size for the equipment must not exceed 150 grams (5.29 ounces) in each refrigerant circuit of the very low temperature refrigeration equipment. As provided in clauses SB6.1.2 to SB6.1.5 of UL 471, the following markings must be attached at the locations provided and must be permanent: (a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves,

			Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." This marking must be provided on or near any evaporators that can be contacted by the consumer. (b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." This marking must be located near the machine compartment. (c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." This marking must be located near the machine compartment. (d) "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." This marking must be provided on the exterior of the refrigeration equipment. (e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." This marking must be provided near all exposed refrigerant tubing. All of these markings must be in letters no less than 6.4 mm (1/4 inch) high. The equipment must have red Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations.	when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing propane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added, then very low temperature equipment using propane should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. Very low temperature equipment using propane may also use another acceptable refrigerant substitute in a separate refrigerant circuit or stage (e.g., one temperature stage with propane and a second stage with ethane).
5. Water coolers (new only)	Propane (R-290)	Acceptable subject to use conditions	This refrigerant may be used only in new equipment designed specifically and clearly identified for the refrigerant--i.e., this refrigerant may not be used as a	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and

			conversion or "retrofit" refrigerant for existing equipment. This refrigerant may be used only in water coolers that meet all requirements listed in Supplement SB to UL 399[1,2,3] In cases where this listing 5 includes requirements more stringent than those of UL 399, the appliance must meet the requirements of this listing 5 in place of the requirements in UL 399. The charge size must not exceed 60 grams (2.12 ounces) per refrigerant circuit in the water cooler. The equipment must have red Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations. As provided in clauses SB6.1.2 to SB6.1.5 of UL 399, the following markings must be attached at the locations provided and must be permanent: (a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." This marking must be provided on or near any evaporators that can be contacted by the consumer. (b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." This marking must be located near the machine compartment. (c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." This marking must be located near the machine compartment. (d) "CAUTION—Risk of Fire or	1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin. A Class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Any refrigerant releases should be in a well-ventilated area, such as outside of a building. Only technicians specifically trained in handling flammable refrigerants should service equipment containing propane. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. If a service port is added, then water coolers or equipment using propane should have service aperture fittings that differ from

			Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." This marking must be provided on the exterior of the refrigeration equipment. (e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." This marking must be provided near all exposed refrigerant tubing.	fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (i.e., right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor.

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, www.epa.gov/dockets; (202) 202–1744. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov.

[2] You may obtain the UL material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; phone: 1–888–853–3503 in the U.S. or Canada (other countries +1–415–352–2168); email: orders@shopulstandards.com; website: https://ulstandards.ul.com/ or www.shopulstandards.com.

[3] UL 399, Standard for Safety: Drinking Water Coolers- Supplement SB: Requirements for Drinking Water Coolers Employing a Flammable Refrigerant in the Refrigerating System, 7th edition, Dated August 22, 2008, including revisions through October 17, 2013.

[4] UL 471, Standard for Safety: Commercial Refrigerators and Freezers. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System, 10th edition, Dated November 24, 2010.

[5] UL 563, Standard for Safety: Ice Makers. Supplement SA: Requirements for Ice Makers Employing a Flammable Refrigerant in the Refrigerating System, 8th edition, Dated July 31, 2009, including revisions through November 29, 2013.

[6] UL 60335-2-89, Standard for Household and Similar Electrical Appliances - Safety - Part 2- 89: Particular Requirements for Commercial Refrigerating Appliances, 2nd edition, Dated October 27, 2021.

[7] You may obtain the ASHRAE material from: American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; phone: 1-800-527-4723 or 1-404-636-8400 in the U.S. or Canada; email: cservice@ashrae.org; website: https://www.ashrae.org/technical-resources/bookstore/ashrae-refrigeration-resources.

[8] ANSI/ASHRAE Standard 15-2022. Safety Standard for Refrigeration Systems, including all addenda published as of May 24, 2023.

[9] ANSI/ASHRAE Standard 34-2022. Designation and Safety Classification of Refrigerants. Copyright 2022.

[10] You may obtain the UN material from: https://unece.org/sites/default/files/2021-9/GHS_Rev9E_0.pdf or from the United Nations Publications section at: https://shop.un.org/books/global-harmon-syst-class-9-92280.

[11] GHS Pictogram for Hazard Category 1 Flammable Gases from Annex 1 to the 9th edition of the Global Harmonized System of Classification and Labelling of Chemicals, copyrighted 2021.

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■ 4. Add appendix Y to subpart G of part 82 to read as follows:

Appendix Y to Subpart G of Part 82—Substitutes Listed in the [Date of publication of the final rule in the Federal Register], Final Rule, Effective [30 days after date of publication of the final rule in the Federal Register]

Refrigerants—Substitutes Acceptable Subject To Use Conditions

End-use	Substitute	Decision	Use Conditions	Further Information
1. Retail Food Refrigeration—Stand-alone units and refrigerated food processing and dispensing equipment (New only)	HFO-1234yf, HFO-1234ze(E), R-454C, R-455A, R-457A, and R-516A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in UL 60335-2-89. These refrigerants may be used in stand-alone units and refrigerated food processing and dispensing equipment if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of July 10, 2023. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 1 in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 1. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry

			on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL	powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 60355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of

			3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol.	Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from retail food refrigeration appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).
2. Retail Food Refrigeration—Refrigerated food processing and dispensing equipment (New only)	Propane (R-290)	Acceptable subject to use conditions	This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., the substitute may not be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). This substitute may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied

			requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in the UL Standard. This refrigerant may be used in refrigerated food processing and dispensing equipment if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of May 24, 2023. In cases where this listing 2 includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 2 in place of the requirements in the ASHRAE Standard. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 2. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "DANGER—Risk of Fire Or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire Or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "DANGER—Risk Of Fire Or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "DANGER—Risk of Fire or Explosion due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate.	petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in

			(e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire or Explosion—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed.	handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from retail food refrigeration appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260

			In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol.	through 270).
3. Retail Food Refrigeration—Remote condensing units and supermarket systems (New only)	HFO-1234yf, HFO-1234ze(E), R-454A, R-454C, R-455A, R-457A, and R-516A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in the UL Standard. These refrigerants may be used in remote condensing units and supermarket systems if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of May 24, 2023. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR

			need to meet the requirements of this listing 3 in place of the requirements in the ASHRAE Standard. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 3. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not	1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately

			required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and	following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from retail food refrigeration appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

			• in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol. The substitute R-454A may only be used in equipment with a refrigerant charge capacity less than 200 pounds, or in the high-temperature side of a cascade system.	
4. Commercial Ice Machines (New only)	HFC-32, HFO-1234yf, R-454A, R-454B, R-454C, R-455A, R-457A, and R-516A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in UL 60335-2-89. These refrigerants may be used in new commercial ice machines if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of **May 24, 2023**. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 4 in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 4. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and

			Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside	equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex

			of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of	101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from ice machine appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

			the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol.	
5. Industrial Process Refrigeration (New only)	HFO-1234yf, HFO-1234ze(E), R-454A, R-454B, R-454C, R-455A, R-457A, and R-516A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in UL 60335-2-89. These refrigerants may be used in industrial process refrigeration equipment if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of **May 24, 2023**. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 5 in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 5. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire

			on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL	extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation

			3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border) [1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol. The substitute R-454A may only be used in chillers for industrial process refrigeration, in equipment with a refrigerant charge capacity less than 200 pounds, or in the high-temperature side of a cascade system. The substitutes HFC-32 and R-454B may only be used in chillers for industrial process refrigeration.	requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from industrial process refrigeration appliances are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).
6. Cold Storage	HFO-1234yf,	Acceptable subject to	These refrigerants may be used only in new equipment specifically designed and	Applicable OSHA requirements at 29 CFR

Warehouses (New only)	HFO-1234ze(E), R-454A, R-454C, R-455A, R-457A, and R-516A	use conditions	clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of the requirements in UL 60335-2-89. These refrigerants may be used in cold storage warehouses if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of **May 24, 2023**. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 6 in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 6. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safcty Prccautions Must bc Followcd." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging.	part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, likc many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on

			b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might	air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being

			be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol. The substitute R-454A may only be used either in equipment with a refrigerant charge capacity less than 200 pounds or in the high-temperature side of a cascade system.	recovered or otherwise disposed of from cold storage warehouses are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).
7. Ice Skating Rinks (New only; Equipment with remote compressors)	HFO-1234yf, HFO-1234ze(E), R-454C, R-455A, R-457A, and R-516A	Acceptable subject to use conditions	These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerant (i.e., none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment designed for other refrigerants). These substitutes may only be used in refrigeration equipment that meets all requirements in UL 60335-2-89.[1,2,3] In cases where this listing includes requirements more stringent than those of UL 60335-2-89, the appliance must meet the requirements of this listing in place of	Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances).

			the requirements in UL 60335-2-89. These refrigerants may be used in ice skating rinks with remote compressors if and only if such equipment meets all requirements listed in ASHRAE 15-2022[1,4,5] and all addenda published as of **May 24, 2023**. In cases where this listing includes requirements different than those of ASHRAE 15-2022, the appliance would need to meet the requirements of this listing 7 in place of the requirements in ASHRAE 15-2022. Where similar requirements of ASHRAE 15-2022 and UL 60335-2-89 differ, the more stringent or conservative condition shall apply unless superseded by this listing 7. The following markings must be attached at the locations provided and must be permanent: (a) On the outside of the equipment: "WARNING—Risk of Fire. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (b) On the outside of the equipment: "WARNING—Risk of Fire. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (c) On the inside of the equipment near the compressor: "WARNING—Risk of Fire. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting to Service This Product. All Safety Precautions Must be Followed." (d) For any equipment pre-charged at the factory, on the equipment packaging or on the outside of the equipment: "WARNING—Risk of Fire due to Flammable Refrigerant Used. Follow Handling Instructions Carefully in Compliance with National Regulations" a. If the equipment is delivered packaged, this label shall be applied on the packaging. b. If the equipment is not delivered packaged, this label shall be applied on the outside of the equipment near the control panel or nameplate. (e) On the equipment near the nameplate: a. At the top of the marking: "Minimum Installation Height, X m (W ft)". This marking is only required if required by UL 60335-2-89. The terms "X" and "W" shall be replaced by the numeric height as calculated per the UL	Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing flammable refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and reentry should occur only after the space has been properly ventilated. Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling flammable refrigerants. Special care should be taken to avoid contact with the skin which, like many refrigerants, can cause freeze burns on the skin. A class B dry powder type fire extinguisher should be kept nearby. Technicians should only use spark-proof tools when working on air conditioning equipment with flammable refrigerants. Any recovery equipment used should be designed for flammable refrigerants. Only technicians specifically trained in handling flammable refrigerants should service refrigeration

			Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the height in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. b. Immediately below (a) above or at the top of the marking if (a) is not required: "Minimum room area (operating or storage), Y m^2 (Z ft^2)". The terms "Y" and "Z" shall be replaced by the numeric area as calculated per the UL Standard. Note that the formatting here is slightly different than the UL Standard; specifically, the area in Inch-Pound units is placed in parentheses and the word "and" has been replaced by the opening parenthesis. (f) For non-fixed equipment, on the outside of the product: "WARNING—Risk of Fire or Explosion—Store in a well-ventilated room without continuously operating flames or other potential ignition." (g) For fixed equipment that is ducted, near the nameplate: "WARNING—Risk of Fire—Auxiliary devices which may be ignition sources shall not be installed in the ductwork, other than auxiliary devices listed for use with the specific appliance. See instructions." (h) All of these markings must be in letters no less than 6.4 mm (¼ inch) high. The equipment must have red Pantone Matching System (PMS) #185 or RAL 3020 marked service ports, pipes, hoses, or other devices through which the refrigerant passes, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and other parts of the system where service puncturing or other actions creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch (25mm) in both directions from such locations and shall be replaced if removed. In addition to the markings described in Clauses 7.6 and 7.6DV D1 of UL 60335-2-89, the equipment must display the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) warning symbol for hazard category 1 flammable gases (black flame on a white	equipment containing this refrigerant. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. Room occupants should evacuate the space immediately following the accidental release of this refrigerant. Personnel commissioning, maintaining, repairing, decommissioning and disposing of appliances with this refrigerant should obtain training and follow practices consistent with Annex 101.DVT of UL 260355-2-89.[2,3] CAA section 608(c)(2) prohibits knowingly venting or otherwise knowingly releasing or disposing of substitute refrigerants in the course of maintaining, servicing, repairing or disposing of an appliance or industrial process refrigeration. Department of Transportation requirements for transport of flammable gases must be followed. Flammable refrigerants being recovered or otherwise disposed of from ice skating rinks are likely to be hazardous waste under the Resource Conservation and Recovery Act (RCRA) (see 40 CFR parts 260 through 270).

			background in a diamond with equal length sides with a red border)[1,7,8] on the following three locations: • outside of the equipment (label (a)); • on the appliance packaging for a factory-charged unit or adjacent to the control panel or nameplate of a unit charged in place (label (d)); and • in a location visible when accessing a service port and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (e.g., process tubes) (service label). The perpendicular height of the diamond containing the GHS warning symbol for hazard category 1 flammable gases shall be at least 15 mm (9/16 in). In addition, next to the GHS warning symbol for hazard category 1 flammable gases must be text of the refrigerant safety class of the refrigerant according to ASHRAE 34-2022,[1,4,6] in letters at least one-third the height of the diamond symbol.	

[1] The Director of the Federal Register approves this incorporation by reference (5 U.S.C. 552(a) and 1 CFR part 51). You may inspect a copy at the U.S. EPA or at the National Archives and Records Administration (NARA). Contact the U.S. EPA at: EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, www.epa.gov/dockets; (202) 202–1744. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations.html or email fr.inspection@nara.gov.

[2] You may obtain the UL material from: Underwriters Laboratories Inc. (UL) COMM 2000; 151 Eastern Avenue; Bensenville, IL 60106; phone: 1–888–853–3503 in the U.S. or Canada (other countries +1–415–352–2168); email: orders@shopulstandards.com; website: https://ulstandards.ul.com/ or www.shopulstandards.com.

[3] UL 60335-2-89, Standard for Household and Similar Electrical Appliances - Safety - Part 2- 89: Particular Requirements for Commercial Refrigerating Appliances, 2nd edition, Dated October 27, 2021.

[4] You may obtain the ASHRAE material from: American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 180 Technology Parkway NW, Peachtree Corners, Georgia 30092; phone: 1-800-527-4723 or 1-404-636-8400 in the U.S. or Canada; email: cservice@ashrae.org; website: https://www.ashrae.org/technical-resources/bookstore/ashrae-refrigeration-resources.

[5] ANSI/ASHRAE Standard 15-2022. Safety Standard for Refrigeration Systems, Copyright 2022, including the following addenda to ANSI/ASHRAE Standard 15-2022, Safety Standard for Refrigeration Systems, as published by **May 24, 2023**.

[6] ANSI/ASHRAE Standard 34-2022. Designation and Safety Classification of Refrigerants. Copyright 2022.

[7] You may obtain the UN material from: https://unece.org/sites/default/files/2021-9/GHS_Rev9E_0.pdf or from the United Nations Publications section at: https://shop.un.org/books/global-harmon-syst-class-9-92280.

[8] GHS Pictogram for Hazard Category 1 Flammable Gases from Annex 1 to the 9th edition of the Global Harmonized System of Classification and Labelling of Chemicals, copyrighted 2021.

■ 5. Amend §82.154 by revising paragraph (a)(1)(viii) to read as follows:

§82.154 Prohibitions.

(a) * * *

(1) * * *

(viii)Propane (R-290) in retail food refrigerators and freezers—stand alone units; household refrigerators, freezers, and combination refrigerators and freezers; self-contained room air conditioners for residential and light commercial air-conditioning and heat pumps; vending machines; effective January 3, 2017, self-contained commercial ice machines, very low temperature refrigeration equipment, and water coolers; and effective [30 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], retail food refrigeration—refrigerated food processing and dispensing equipment;

* * * * *

[FR Doc. 2023–09600 Filed 5–23–23; 8:45 am]

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